

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services)	WT Docket No. 10-112
)	
Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications)	
)	

NOTICE OF PROPOSED RULEMAKING AND ORDER

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By the Commission:

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I. INTRODUCTION

1. The Commission currently has a patchwork of rules governing renewal and discontinuance obligations for wireless services, such as cellular, personal communications services (PCS), specialized mobile radio (SMR), and wireless communications service (WCS). In this proceeding, we propose to create consistent requirements for renewal of licenses and consistent consequences for discontinuance of service, and to clarify construction obligations for spectrum licenses that have been divided, by geographic partitioning or disaggregation of the spectrum. In making these rules clearer and consistent across services, we seek to apply the rules that have worked the best to a larger group of services, and to simplify the regulatory process for licensees.

II. EXECUTIVE SUMMARY

A. Notice of Proposed Rulemaking

2. *License renewals.* We propose to adopt uniform renewal requirements for the renewal of Wireless Radio Services¹ licenses. Specifically, we tentatively conclude to adopt and apply the renewal framework that the Commission established for the 700 MHz Commercial Services Band in the 700 MHz

¹ Section 1.907 of the Commission's rules defines the term "Wireless Radio Services" as "[a]ll radio services authorized in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of this chapter, whether commercial or private in nature." 47 C.F.R. § 1.907. We note that Part 26 no longer exists.

*First Report and Order*² to services licensed by geographic area and, with certain refinements, to services licensed by site. Consistent with that order, we propose that applicants for renewal of geographic-area licenses file a “renewal showing,” in which they demonstrate that they have and are continuing to provide service to the public,³ and are compliant with the Commission’s rules and policies and the Communications Act of 1934, as amended (Act). For renewal of site-specific licenses, we propose that applicants certify that they are operating as represented in their latest construction notification or authorization (where a construction notification is not required), and that they are compliant with the Commission’s rules and policies and the Act.⁴

3. Consistent with the 700 MHz *First Report and Order*, we also tentatively conclude that we should prohibit the filing of applications that are mutually exclusive (*i.e.*, competing) with renewal applications. Further, we tentatively conclude that if the Commission denies a renewal application, then the licensed spectrum will be returned automatically to the Commission for reassignment.⁵

4. *Discontinuance of operations.* We propose to harmonize our requirements regarding discontinuance of operations (and its consequences) by Wireless Radio Services licensees. Specifically, we seek comment on the appropriate period that should be used to define permanent discontinuance of operations and whether the public interest would be served by adoption of a uniform definition for all Wireless Radio Services (other than those licensed by rule or on a “personal” basis or that have no construction/performance obligation).

5. *Partitioning and disaggregation.* We propose to standardize our rules regarding the satisfaction of performance (*i.e.*, construction and operation) obligations in the context of geographic partitioning⁶ and spectrum disaggregation arrangements.⁷ Specifically, we tentatively conclude that the public interest would be served by requiring any party holding an FCC spectrum license resulting from

² See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8092-8094 ¶¶ 73-77 (2007) (700 MHz *First Report and Order*) (subsequent history omitted). The Commission adopted the new framework for the 700 MHz Commercial Services Band at 698-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz. The Commission did not adopt the new framework for the 700 MHz Guard Band Service at 757-758 MHz, 775-776 MHz, 787-788 MHz, and 805-806 MHz.

³ In the 700 MHz *First Report and Order*, the Commission referred to a “substantial service” renewal showing. The concept of substantial service for a renewal showing is significantly broader than, and distinct from, the concept (found in some service rules) that licensees demonstrate substantial service to satisfy a performance (also known as a buildout or construction) requirement. As explained below (*see infra* paras. 22-24), we seek to eliminate any confusion that may have resulted from our using the same terminology (but with different meanings) in two contexts, and therefore propose to adopt the term renewal showing rather than substantial service renewal showing. Additionally, we note that the Commission may undertake a separate proceeding to clarify and review wireless radio service performance standards, including consideration of standards other than substantial service.

⁴ We note that in Section III.A.3 we propose to exclude from the scope of our renewal proposals those Wireless Radio Services that are licensed by rule or on a “personal” basis or that have no construction obligation, given that the licensing rules at issue in this proceeding are not applicable to those services in the same manner as the majority of the Wireless Radio Services. *See infra* discussion at Section III.A.3.

⁵ Where a protected site-based incumbent fails to obtain renewal of its license, its spectrum will in some cases revert to an overlay geographic area licensee.

⁶ In geographic partitioning, a licensee assigns a portion of its licensed area to a third party, which then becomes the licensee for the partitioned area.

⁷ In spectrum disaggregation, a licensee assigns discrete portions or “blocks” of its licensed spectrum in a licensed area to a third party, which then becomes the licensee for the disaggregated spectrum.

partitioning or disaggregation to independently meet the applicable construction requirements. We believe this approach will facilitate efficient spectrum use while enabling service providers to configure geographic-area licenses and spectrum blocks to meet their operational needs.

B. Order

6. In the companion Order below, we impose a freeze, effective upon adoption of this order, on the filing of new applications that are mutually exclusive (*i.e.*, competing) with renewal applications. We also establish a process for addressing renewal applications filed during this rulemaking, and address the status of currently pending competing renewal applications.

III. NOTICE OF PROPOSED RULEMAKING

A. Renewal Requirements for Wireless Radio Services

7. One of our principal goals in this proceeding is to harmonize the Commission's varying requirements for the renewal of Wireless Radio Services licenses where such harmonization would advance the public interest. Commission licensing records reflect that, over the next ten years, we can expect more than 30,000 renewal showings to be filed by geographic-area licensees and more than 400,000 by site-based licensees. We seek to implement standardized renewal requirements and expeditious renewal procedures, but only to the extent that such requirements and procedures will ensure that licenses are renewed in the public interest as required by the Act. We find that adoption of uniform renewal policies and procedures will promote the efficient use of spectrum resources, and will serve the public interest by providing licensees certainty regarding their license renewal requirements. We also find that the renewal processes that we propose to adopt below would encourage licensees to invest in new facilities and services, and facilitate their business and network planning. We seek comment on these findings.

1. Current Requirements

8. Section 1.949(a) specifies two universal requirements for filing applications for renewal of licenses in the Wireless Radio Services.⁸ First, the rule establishes a 90-day filing period for renewal applications, beginning 90 days prior to expiration of an authorization and ending on its expiration date.⁹ Second, the rule requires applicants to use the "same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605."¹⁰ Section 1.949(a) further provides that "[a]dditional renewal requirements applicable to specific services are set forth in the subparts governing those services."¹¹ As explained below, the Commission's current renewal requirements vary widely; some rules include comprehensive procedures, while others contain only minimal guidance.

9. *Part 22.* The Part 22 Cellular Radiotelephone Service rules establish a detailed, two-step comparative hearing process for addressing a timely-filed renewal application and all timely-filed mutually exclusive applications.¹² The rules require an administrative law judge (ALJ) to conduct a threshold hearing to determine whether a cellular renewal applicant is entitled to a renewal expectancy.¹³

⁸ 47 C.F.R. § 1.949(a).

⁹ *Id.* Specifically, renewal applications "must be filed no later than the expiration date of the authorization," but "no sooner than 90 days prior to expiration." *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See 47 C.F.R. §§ 22.935-22.940.

¹³ A renewal expectancy is awarded if the ALJ finds that the renewal applicant has provided substantial service, and substantially complied with the Commission's rules, policies, and the Communications Act. See 47 C.F.R. (continued....)

If the ALJ determines that the applicant is entitled to a renewal expectancy and is otherwise basically qualified, the license is renewed and any competing applications are denied.¹⁴ If an ALJ determines that a renewal expectancy is unwarranted, however, all mutually exclusive applications in the renewal filing group are considered in a full comparative hearing.¹⁵

10. *Part 24.* In contrast to the detailed Part 22 Cellular renewal rules, our Part 24 Broadband Personal Communications Service (PCS) rules contain virtually no guidance regarding comparative renewal applications, do not specify how or when competing applications are to be filed against a renewal application, do not establish two-step hearings, and do not enumerate procedures for evaluating renewal applications or what is required in a renewal expectancy exhibit.¹⁶

11. *Part 27.* Our Part 27 Miscellaneous Wireless Communications Services (WCS) rules, albeit more detailed than Part 24, contain few specific rules addressing the possibility of competing renewal applications, and affirmatively prohibit such filings against renewal applicants in the 700 MHz Commercial Services Band.¹⁷ Part 27 provides that WCS renewal applicants involved in a comparative renewal proceeding will receive a renewal expectancy if they demonstrate that they have provided substantial service and have substantially complied with the Commission's rules and policies and the Act.¹⁸ Part 27, however, does not specify what type of hearing procedures (two-step or otherwise) would apply to mutually exclusive applications in the WCS renewal context.

12. We note that in response to the Commission's request for comments in the 2008 biennial review proceeding,¹⁹ NextWave Wireless Inc. (NextWave) urges repeal of Part 27 comparative renewal rules for all affected licensees.²⁰ NextWave claims that the increasing competition for spectrum at auction indicates that the Commission's market-oriented Part 27 framework, including substantial service requirements, is successful. NextWave argues that, given such success, Part 27's comparative renewal provisions are not in the public interest, particularly where a licensee has invested considerable sums at auction and in fulfilling its substantial service and other legal requirements.²¹ By contrast, Green Flag

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§§ 22.935(c), 22.940(a). Additional issues (e.g., qualifications of the renewal applicant) also may be specified for consideration by the ALJ. See 47 C.F.R. § 22.935(c).

¹⁴ See 47 C.F.R. § 22.935(c).

¹⁵ See 47 C.F.R. § 22.935(c). The specific elements to be considered by the ALJ in comparing the competing applications are delineated in the rules. See 47 C.F.R. § 22.940.

¹⁶ See 47 C.F.R. § 24.16; see generally 47 C.F.R. Pt. 24.

¹⁷ See 47 C.F.R. § 27.14(e).

¹⁸ See 47 C.F.R. § 27.14(b). Section 27.14(c) of the Commission's rules, 47 C.F.R. § 27.14(c), specifies the minimum information to be included by a "WCS renewal applicant" to establish a renewal expectancy, similar to the rules governing the cellular service.

¹⁹ See "The Commission Seeks Public Comment in the 2008 Biennial Review of Telecommunications Regulations," WT Docket No. 08-182 *et seq.*, Public Notice, 23 FCC Rcd 13636 (2008) ("2008 Biennial Review PN"). Under Section 11 of the Act, 47 U.S.C. § 161, every even-numbered year, the Commission must review regulations that apply to the operations or activities of any telecommunications service provider, and determine whether such regulations continue to be necessary. 2008 Biennial Review PN, 23 FCC Rcd at 13636.

²⁰ See generally Comments of NextWave Wireless Inc., WT Docket No. 08-182 (filed Oct. 7, 2008).

²¹ *Id.* at 2. NextWave further contends that: comparative renewals create uncertainty and deter competition; petitions to deny and subsequent reauction of spectrum held by licensees determined to not be providing substantial service achieve the same goal (*i.e.*, efficient spectrum use); and licensing procedures and renewal expectancies should be consistent to promote competition for all Part 27 spectrum. *Id.* at 3.

Wireless Communications, LLC, CWC License Holding, Inc., and James McCotter urge us to retain the current Part 27 comparative renewal rules, and characterize NextWave's biennial review comments as an attempt to "end run" their applications that compete with the WCS renewal applications of NextWave and other WCS incumbents.²²

13. *Part 90.* The Part 90 Commercial Mobile Radio Service (CMRS)²³ rules present another situation. The Commission has stated that Part 90 CMRS licensees would be afforded a renewal expectancy and that "[t]he applicable sections of Part 22 governing . . . renewal expectancy will be incorporated into Part 90."²⁴ At present, however, only two sections in Part 90 address CMRS renewal situations.²⁵

14. Part 90 does include specific provisions regarding the renewal of 220-222 MHz licenses, which are similar to the Part 27 rules in providing that renewal applicants must demonstrate that they have provided substantial service during the past license term and have substantially complied with applicable FCC rules and policies and the Act.²⁶ Section 90.743 further provides that, for a 220-222 MHz renewal applicant to receive a renewal expectancy, it must include a description of its current service in terms of geographic coverage and population served, an explanation of its record of expansion including a timetable for new station construction to meet changes in service demand, a description of investments, copies of any FCC orders finding that the renewal applicant has violated the Act or any FCC rule or policy, and a list of any pending proceedings that relate to any such violation.²⁷ This section does not, however, specify the procedures for processing competing renewal applications.

15. *Part 101.* Part 101 includes a number of renewal rules that are similar to those found in Part 27. Section 101.1011(c), for example, requires a renewal applicant for a local multipoint distribution service license to file detailed information to demonstrate substantial service in a comparative renewal proceeding, but such information is not required to demonstrate substantial service as a performance requirement.²⁸ AT&T Inc. (AT&T), which supports NextWave's proposal to eliminate comparative renewals for all Part 27 licensees,²⁹ urges us to eliminate similar Part 101 renewal rules.³⁰ AT&T argues

²² See generally Reply Comments of Green Flag Wireless Communications, LLC, CWC License Holding, Inc., and James McCotter, WT Docket No. 08-182 (filed Oct. 28, 2008).

²³ Section 332(d) of the Act defines commercial mobile radio service (CMRS) as any mobile service "that is provided for profit and makes interconnected service available to (A) the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission." 47 U.S.C. § 332(d). See also 47 C.F.R. § 20.9 (enumerating the mobile services presumed to be CMRS).

²⁴ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8157 ¶ 386 (1994), citing 47 C.F.R. § 22.940.

²⁵ Section 90.165 addresses procedures for mutually exclusive applications, and includes provisions related to defining and processing a "renewal filing group." 47 C.F.R. § 90.165(b)(1), (c)(3)(i), and (c)(4)(i).

²⁶ 47 C.F.R. § 90.743(a).

²⁷ 47 C.F.R. § 90.743(b).

²⁸ 47 C.F.R. § 101.1011(c).

²⁹ See *supra* para. 12.

³⁰ See generally Reply Comments of AT&T Inc., WT Docket No. 08-182 (filed Oct. 27, 2008) ("AT&T Reply Comments"). AT&T states that the comparative renewal procedures at 47 C.F.R. §§ 101.17 (38.6-40.0 GHz), 101.529 (24 GHz), 101.1011 (local multipoint distribution service), 101.1327 (multiple address systems), and (continued....)

that the comparative renewal procedures for Part 27 and Part 101 auctionable services impose unnecessary burdens and costs on both the Commission and licensees.³¹ AT&T concludes that we should apply our Part 27 700 MHz Commercial Services Band licensee renewal framework—barring competing renewal applications and described in the next paragraph—to other Part 27 and Part 101 services.³²

2. Proposed Requirements

16. In the *700 MHz First Report and Order*, the Commission adopted a new paradigm for renewal of wireless licenses. Specifically, the Commission determined that renewal applicants in the 700 MHz Commercial Services Band will not be subject to competing applications and that if a renewal application is not granted, the licensed spectrum will be returned to the Commission for reassignment.³³ The Commission also determined that renewal applicants in these bands must affirmatively demonstrate that they have provided “substantial service” to the public during their license term, and are in compliance with the Commission’s rules and policies and the Act.³⁴

17. We propose to adopt renewal requirements for numerous Wireless Radio Services based on the Commission’s model for the 700 MHz Commercial Services Band licensees.³⁵ Under this three-part approach:

- (1) renewal applicants must file a detailed renewal showing, demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), and substantially complying with the Commission’s rules (including any applicable performance requirements) and policies and the Communications Act;
- (2) competing renewal applications are prohibited; and
- (3) if a license is not renewed, the associated spectrum is returned to the Commission for reassignment.³⁶

18. We propose to modify the first part of this approach for services licensed by site by requiring affected licensees to certify that they are continuing to operate consistent with their applicable construction notification(s) or authorization(s) (where the filing of construction notifications is not required), rather than making a renewal showing. Wireless Radio Services licensed by rule or on a “personal” basis or that have no construction/performance obligation are beyond the scope of this proceeding.

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101.1413 (multichannel video distribution and data service) are similar to the renewal rules of section 27.14(b)-(d), and should be removed.

³¹ *Id.* at 2. AT&T notes that the Commission has estimated that a routine comparative renewal proceeding can take up to five years. *Id.* at 2-3, citing Implementation of Section 309(j) of the Telecommunications Act – Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, *First Report and Order*, 13 FCC Rcd 15920, 15933-34 ¶ 36 (1998).

³² AT&T Reply Comments at 5-6.

³³ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093-8094 ¶¶ 75-77. See also 47 C.F.R. § 27.14(e).

³⁴ *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

³⁵ We note that we may make conforming changes to the renewal rules for the 700 MHz Commercial Services Band consistent with the policies we may ultimately adopt in this proceeding.

³⁶ *700 MHz First Report and Order*, 22 FCC Rcd at 8093-8094 ¶¶ 75-77.

19. We propose to revise section 1.949³⁷ to specify the renewal showing requirements and procedures that will be applied to Wireless Radio Services. The proposed language of revised section 1.949 is set forth in Appendix A. We specifically seek comment on the draft rule provisions. In addition to revising the generally applicable Part 1 renewal rule governing Wireless Radio Services, we propose a number of rule revisions and deletions in the rule sections governing specific Wireless Radio Services. We specifically request comment on these proposed rule revisions.

a. Geographically Licensed Services—Renewal Showing

20. We tentatively conclude that the public interest would be served by adopting and applying the Commission's 700 MHz three-part renewal paradigm to the following Wireless Radio Services, which are licensed on a geographic-area basis:

- 1.4 GHz Service;³⁸
- 1.6 GHz Service;³⁹
- 24 GHz Service;⁴⁰
- 39 GHz Service;⁴¹
- 218-219 MHz Service (formerly Interactive Video Data Service);⁴²
- 220-222 MHz Service;⁴³
- 700 MHz Guard Band Service;⁴⁴
- 800 MHz Specialized Mobile Radio Service;⁴⁵
- 900 MHz Specialized Mobile Radio Service;⁴⁶
- Advanced Wireless Service;⁴⁷
- Air-Ground Radiotelephone Service (Commercial Aviation);⁴⁸
- Broadband Personal Communications Service;⁴⁹

³⁷ 47 C.F.R. § 1.949.

³⁸ See 47 C.F.R. Pt. 27, Subpt. I.

³⁹ See 47 C.F.R. Pt. 27, Subpt. J.

⁴⁰ See 47 C.F.R. Pt. 101, Subpt. G.

⁴¹ See 47 C.F.R. Pt. 101, Subpt. B.

⁴² See 47 C.F.R. Pt. 95, Subpt. F.

⁴³ See 47 C.F.R. Pt. 90, Subpt. T.

⁴⁴ See 47 C.F.R. Pt. 27, Subpt. G. The 700 MHz guard bands include Block A 757-758, 787-788 MHz, and Block B 775-776, 805-806 MHz.

⁴⁵ See 47 C.F.R. Pt. 90, Subpt. S.

⁴⁶ See 47 C.F.R. Pt. 90, Subpt. S.

⁴⁷ See 47 C.F.R. Pt. 27, Subpt. L.

⁴⁸ See 47 C.F.R. Pt. 22, Subpt. G.

- Cellular Radiotelephone Service;⁵⁰
- Dedicated Short Range Communications Service;⁵¹
- Local Multipoint Distribution Service;⁵²
- Multichannel Video Distribution and Data Service;⁵³
- Multilateration Location and Monitoring Service;⁵⁴
- Multiple Address Systems (EAs);⁵⁵
- Narrowband Personal Communications Service;⁵⁶
- Paging and Radiotelephone Service;⁵⁷
- Public Coast Stations, including Automated Maritime Telecommunications Systems;⁵⁸ and
- Wireless Communications Service.⁵⁹

21. In the *700 MHz First Report and Order*, the Commission determined that 700 MHz Commercial Services Band licensees must file a renewal application pursuant to section 1.949, demonstrating “that they have provided substantial service during their past license term, which is defined as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal.”⁶⁰ The Commission explained that the substantial service showing made in support of a renewal application is distinct from any substantial service performance showing (also

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⁴⁹ See 47 C.F.R. Pt. 24, Subpt. E.

⁵⁰ See 47 C.F.R. Pt. 22, Subpt. H. The Cellular Radiotelephone Service is currently licensed by site. We note that CTIA – The Wireless Association has filed a petition for rulemaking seeking the transition of the service to geographic-area licensing. See CTIA – The Wireless Association Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing, RM No. 11510 (filed Oct. 8, 2008). The Commission has sought comment on CTIA’s petition. See “Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Transition Part 22 Cellular Services to Geographic Market-Area Licensing,” RM No. 11510, *Public Notice*, 24 FCC Rcd 27 (WTB 2009).

⁵¹ See 47 C.F.R. Pt. 90, Subpt. M. Non-reserved Dedicated Short Range Communications Service frequencies in the 5850-5925 MHz band are licensed on the basis of non-exclusive geographic areas. Such licenses serve as a prerequisite for registering individual Roadside Units (RSUs) located within the licensed geographic area. See 47 C.F.R. § 90.375.

⁵² See 47 C.F.R. Pt. 101, Subpt. L.

⁵³ See 47 C.F.R. Pt. 101, Subpt. P.

⁵⁴ See 47 C.F.R. Pt. 90, Subpt. M.

⁵⁵ See 47 C.F.R. Pt. 101, Subpt. O.

⁵⁶ See 47 C.F.R. Pt. 24, Subpt. D.

⁵⁷ See 47 C.F.R. Pt. 22, Subpt. E; 47 C.F.R. Pt. 90, Subpt. P.

⁵⁸ See 47 C.F.R. Pt. 80, Subpt. J.

⁵⁹ See 47 C.F.R. Pt. 27, Subpt. D.

⁶⁰ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

known as a buildout or construction showing) under the Commission's service rules.⁶¹ The Commission emphasized that "a licensee that meets the applicable performance requirements might nevertheless fail to meet the substantial service standard at renewal."⁶²

22. Many of the Commission's specific service rules require performance showings to be made at the midpoint and end of an initial license term regarding population or area covered.⁶³ For some services, licensees must demonstrate, or may elect to demonstrate, substantial service as their performance requirement during their initial license term.⁶⁴ Thus, under our current rules, some licensees could make two distinct substantial service showings, one to support their renewal application and one for performance purposes, at the end of their initial license term.⁶⁵ Under our performance requirement rules, a licensee generally provides a snapshot in time (usually as of or near the date on which the notification or other filing is submitted) of the level of service that it is providing to the public.⁶⁶ By contrast, a substantial service showing for renewal requires more detailed information regarding a licensee's services and related matters for its entire license period than one made for performance purposes.⁶⁷

⁶¹ See *id.*

⁶² *Id.* In this regard, section 27.14(e) of the Commission rules, adopted in the 700 MHz proceeding, provides that a renewal applicant "must make a showing of substantial service, independent of its performance requirements, as a condition for renewal at the end of each license term." 47 C.F.R. § 27.14(e).

⁶³ See, e.g., 47 C.F.R. §§ 22.503(k)(1), (2) (paging MEA and EA licensees); 24.103(a)-(c) (narrowband PCS); 24.203(a), (b) (broadband PCS); 27.14(g), (h) (WCS 700 MHz licensees); 90.155(d) (multilateration LMS EA licensees); 90.665(c) (SMR MTA licensees); 90.685(b) (SMR EA licensees); 90.767 (220-222 MHz EA and Regional licensees); 90.769 (220-222 MHz Phase II nationwide licensees); 101.1325 (MAS EA licensees); 101.1413 (MVDDS).

⁶⁴ See, e.g., 47 C.F.R. §§ 22.503(k)(3) (paging MEA and EA licensees); 22.873 (commercial aviation air-ground licensees); 24.103(a)-(d) (narrowband PCS); 24.203(d) (broadband PCS); 27.14(a) (AWS and WCS); 80.49(a)(1) (VHF public coast station geographic area licensees); 80.49(a)(3) (AMTS); 90.155(d) (multilateration LMS EA licensees); 90.665(c) (SMR MTA licensees); 90.685(b) (SMR EA licensees); 90.767 (220-222 MHz EA and Regional licensees); 90.769 (220-222 MHz Phase II nationwide licensees); 95.833(a) (218-219 MHz Service); 101.17 (39 GHz Services); 101.143 (MVDDS); 101.527 (24 GHz Service); 101.1011 (LMDS); 101.1325 (MAS EA licensees).

⁶⁵ Pursuant to 47 C.F.R. § 1.946(c), if a licensee in the Wireless Radio Services fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires. 47 C.F.R. § 1.946(c); see also 47 C.F.R. § 1.955(a)(2) ("Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements.").

⁶⁶ Some of the Commission's performance rules require a licensee to provide service to a minimum percentage of the population in a licensed market area or to a minimum portion of a geographic area. Other performance rules require a licensee to demonstrate that it is providing substantial service in the licensed area. Still other rules require a licensee to certify that it has constructed and is operating the facilities proposed in the underlying application.

⁶⁷ See, e.g., 47 C.F.R. §§ 27.14(b)-(c) (substantial service demonstration required to establish a right to a renewal expectancy must include specific information regarding the level of investment and service during a licensee's past license term that is not required to demonstrate substantial service to satisfy the performance requirements under 47 C.F.R. § 27.14(a)); 90.743 (to demonstrate the provision of substantial service in support of a renewal application, a 220-222 MHz licensee must include specific information that is not required for a licensee to demonstrate that it has provided substantial service to satisfy the performance requirements under either 47 C.F.R. § 90.767 or 90.769); 101.1413(c) (requiring the renewal application of an MVDDS licensee to include specific information at the end of the ten-year license term that is not required to be submitted to demonstrate substantial service at "the end of five (continued....)

23. Specifically, in the *700 MHz First Report and Order*, the Commission explained that “[s]ubstantial service in the renewal context . . . encompasses Commission consideration of a variety of factors including [1] the level and quality of service, [2] whether service was ever interrupted or discontinued, [3] whether service has been provided to rural areas, and [4] any other factors associated with a licensee’s level of service to the public.”⁶⁸ We tentatively conclude that these same factors should be considered by the Commission when evaluating renewal showings for the Wireless Radio Services licensed on a geographic-area basis that are identified above. We request comment regarding our proposed list of Wireless Radio Services that would be subject to the renewal showing requirement. Interested parties that recommend revising the proposed list should specifically describe the proposed change and the rationale for any such change.

24. We also seek to eliminate any confusion that may have arisen from our using the “substantial service” terminology in both the renewal and performance contexts. Accordingly, to avoid the potential for confusion and to better reflect the broad array of factors that the Commission considers when evaluating a renewal application, we propose to change the applicable nomenclature and require that licensees make a “renewal showing,” rather than a “substantial service” renewal showing. We also note that, in a separate proceeding, we may seek to clarify wireless radio service performance standards, including consideration of standards other than substantial service.

25. Pursuant to Section 308(b) of the Communications Act, the Commission may require renewal applicants to “set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station” as well as “such other information as it may require.”⁶⁹ We seek comment on whether factors in addition to those identified above should be considered by the Commission when evaluating applications for renewal.

26. We note that a number of our existing service rules enumerate factors that a renewal applicant must address to obtain a renewal expectancy.⁷⁰ For example, Part 90 requires a 220-222 MHz Service renewal applicant to provide: “(1) A description of its current service in terms of geographic coverage and population served; (2) For an EA, Regional, or nationwide licensee, an explanation of its record of expansion, including a timetable of the construction of new stations to meet changes in demand for service; (3) A description of its investments in its system; (4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and (5) A list of any pending proceedings that relate to any matter described in this paragraph.”⁷¹ The Part 22 Cellular Radiotelephone Service and Part 95 218-219 MHz Service rules contain similar renewal showing requirements.⁷² Part 101 requires 39 GHz Service renewal applicants to describe their current service in

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years into the license term” pursuant to 47 C.F.R. § 101.1413(b)); 101.1327 (requiring an MAS EA renewal applicant to provide specific information at the end of the ten-year license term that is not required for licensees that opt to satisfy their mid-term performance requirement via a substantial service showing pursuant to 47 C.F.R. § 101.1325(b)).

⁶⁸ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

⁶⁹ 47 U.S.C. § 308(b).

⁷⁰ The Commission has defined the concept of a renewal expectancy in the cellular context as “a significant comparative preference in comparative cellular renewal proceedings.” Amendment of Part 22 of the Commission’s Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, CC Docket No. 90-358, *Report and Order*, 7 FCC Rcd 719 (1992) (subsequent history omitted).

⁷¹ 47 C.F.R. § 90.743(b).

⁷² A cellular renewal applicant must provide “(i) A description of its current service in terms of geographic coverage and population served, as well as the system’s ability to accommodate the needs of roamers; (ii) An explanation of its record of expansion, including a timetable of the construction of new cell sites to meet changes in (continued....)

terms of geographic coverage, population served, additional services provided during the license period, and investments in their systems, including the type of facilities constructed and their operational status.⁷³

27. In order to facilitate public review and assessment of the factors set forth in various current rules for demonstrating that the applicant should receive a renewal expectancy, we include a listing of those factors for comment:⁷⁴

- A description of the licensee's current service in terms of geographic coverage and population served;⁷⁵
- An explanation of the licensee's record of expansion, including a timetable for the construction of new sites to meet changes in demand for service;⁷⁶
- A description of its investments in its system;⁷⁷
- A list, including addresses, of all cell transmitter stations constructed;⁷⁸
- Identification of type of facilities constructed and their operational status;⁷⁹
- Consideration of whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to benefit customers;⁸⁰

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demand for cellular service; (iii) A description of its investments in its cellular system; and (iv) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.” 47 C.F.R. § 22.940(a)(2). *See also* 47 C.F.R. § 95.833(b) (218-219 MHz Service renewal showing requirements).

⁷³ 47 C.F.R. § 101.176(a). An LMDS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy and include, at a minimum, a description of its current service in terms of geographic coverage and population served; an explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service; a description of its investments in its LMDS system; copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings relating to such issues. *See* 47 C.F.R. § 101.1011(c).

⁷⁴ This list does not include the near universal requirement that an applicant provide copies of all FCC orders finding the licensee to have violated the Act or any FCC rule or policy and a list of any pending proceedings relating to such matters involving the licensee.

⁷⁵ *See* 47 C.F.R. §§ 22.940(a)(2)(i) (for cellular licensees, this factor also includes a discussion of the system's ability to accommodate the needs of roamers); 27.14(c)(1) (WCS); 90.743(b)(1) (220-222 MHz); 90.816(b)(2)(i) (900 MHz SMR); 95.833(b)(1) (218-219 MHz); 101.17(a)(1), (2) (for 39 GHz licensees, also include a description of any additional service provided during the license term); 101.527(b)(1) (for 24 GHz licensees, to be supported by a report, maps, and other documents); 101.1011(c)(1) (LMDS); and 101.1413(c)(1), (2) (MVDDS licensees must include, as part of this showing, a coverage map depicting the served and unserved areas, and may show transmitter locations in the served areas).

⁷⁶ *See* 47 C.F.R. §§ 22.940(a)(2)(ii) (cellular); 27.14(c)(2) (WCS); 90.743(b)(2) (220-222 MHz); 90.816(b)(2)(ii) (900 MHz SMR); 95.833(b)(2) (218-219 MHz); 101.1011(c)(2) (LMDS); and 101.1327(a)(3) (MAS EA licensees).

⁷⁷ *See* 47 C.F.R. §§ 22.940(a)(2)(iii) (cellular); 27.14(c)(3) (WCS); 90.743(b)(3) (220-222 MHz); 90.816(b)(2)(iii) (900 MHz SMR); 95.833(b)(3) (218-219 MHz); 101.17(b)(3) (39 GHz); 101.527(b)(1) (24 GHz); 101.1011(c)(3) (LMDS); and 101.1327(a)(4) (MAS EA licensees).

⁷⁸ *See* 47 C.F.R. § 95.833(b)(4) (218-219 MHz).

⁷⁹ *See* 47 C.F.R. § 101.17(a)(2) (39 GHz).

⁸⁰ *See* 47 C.F.R. § 101.1327(b)(1) (MAS EA licensees).

- Consideration of whether the licensee's operations serve niche markets or focus on serving populations outside of areas served by other licensees;⁸¹ and
- Consideration of whether the licensee's operations serve populations with limited access to telecommunications services.⁸²

28. We seek comment regarding whether, in addition to the factors that the Commission specified in the *700 MHz First Report and Order*, the public interest would be served by consideration of any of the factors enumerated above when assessing whether a licensee has demonstrated a level of service warranting renewal. We encourage parties to address whether these or other factors would enhance our ability to assess whether a license should be renewed, and the degree to which a factor could reasonably be demonstrated by renewal applicants. We further encourage parties to address whether these or other factors should be used where facilities are used to meet a licensee's private, internal communication needs.

29. We also seek comment on whether the public interest would be served by codifying in section 1.949 a nonexclusive list of the factors that applicants should address in renewal showings. Enumerating such factors in one rule for all affected services would provide members of the wireless industry regulatory certainty in an area where there currently is scant precedent and varying requirements in our service rules. Our objective in suggesting a standardized codification of relevant factors is to conform the current service-specific rules with the proposed policies discussed herein and to eliminate any potential confusion. We request comment on this proposal.

30. *Broadband Radio Service and Educational Broadband Service.* We conclude that modification of our renewal showing proposal is appropriate to address the unique circumstances of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS). In 2004, the Commission found that the 2500-2690 MHz band was underutilized.⁸³ To encourage the development of new and innovative wireless services in the band, the Commission adopted rules that fundamentally changed the band plan and technical rules.⁸⁴ The former band plan consisted of interleaved channel blocks.⁸⁵ The new band plan consists of two low-power segments, the Lower Band Segment (LBS) and the Upper Band Segment (UBS), and a high-power segment, the Middle Band Segment (MBS).⁸⁶

31. Under the new band plan, licensees are given contiguous channel blocks in the LBS and UBS.⁸⁷ The MBS includes seven high-power channels for those licensees that wish to transmit video

⁸¹ See 47 C.F.R. §§ 101.1327(b)(2) (MAS EA licensees); 101.1413(b)(1) (MVDDS).

⁸² See 47 C.F.R. § 101.1413(b)(2) (MVDDS).

⁸³ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*, WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O*).

⁸⁴ *Id.* at 14165-14169 ¶¶ 1-4.

⁸⁵ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Rcd 6722, 6744 ¶ 47 (2003) (*NPRM*).

⁸⁶ *BRS/EBS R&O*, 19 FCC Rcd at 14169 ¶ 6.

⁸⁷ *Id.* at 14183-14184 ¶ 37.

programming.⁸⁸ The *BRS/EBS R&O* further established a plan to transition EBS and BRS licensees from their interleaved channel locations to their new channel locations in the LBS, UBS, or MBS.⁸⁹ In addition to changing spectrum locations, licensees must change the architecture of their operations to conform to the new technical rules. Thus, to facilitate the transition to the new band plan and the development and deployment of new and innovative wireless services, the Commission eliminated the discontinuance of service rules,⁹⁰ and adopted in their place a substantial service standard under which all BRS and EBS licensees must show substantial service on or before May 1, 2011.⁹¹

32. Given the Commission's decision to allow BRS and EBS licensees to discontinue service and to require substantial service as of May 1, 2011, we generally believe it would not be appropriate to apply our proposed renewal framework to BRS or EBS licenses with a term that is scheduled to expire on or before that date. Accordingly, given that most BRS incumbent licenses expire on May 1, 2011, we propose to apply this renewal framework to BRS incumbent licenses starting with their new license term. We also tentatively conclude that it would be premature to apply this renewal framework to EBS licenses with ten-year license terms scheduled to expire on or before May 1, 2011. We seek comment on the appropriate effective date for applying this renewal paradigm to EBS licensees with ten-year license terms scheduled to expire after that date. In addition, we propose to apply the renewal framework to BRS Basic Trading Authorizations, most of which are scheduled to expire in 2016. We believe such licensees will have sufficient time to complete the transition and make the required renewal showing over the period from 2011 to 2016. We seek comment on these proposals and any other issues related to renewals for BRS and EBS.

b. Site-Based Licensed Services—Certification Requirement

33. We find that Wireless Radio Services licensed by site generally are subject to licensing and renewal policies under which requiring a showing of substantial service to support grant of renewal would not be appropriate. In site-based services, a licensee's initial application for authorization provides the exact technical parameters of its planned operations, and the licensee's subsequent notification that it has completed construction confirms that the facilities have been constructed consistent with its authorization (or with minor modifications as may be permitted by the applicable service rules). A licensee also may file to modify its license, which may lead to a modified authorization and the submission of a subsequent construction notification. Consequently, at the time a site-based service provider files a renewal application, it should be operating as licensed or not operating. Under either scenario, the concept of substantial service is inapposite.

34. Accordingly, for site-based services, we propose to revise the Commission's Form 601

⁸⁸ *Id.* at 14197-14198 ¶ 72. Generally, licensees in the A-group through G-group channels will receive one MBS channel in addition to three LBS or UBS channels. *Id.* at 14183-14184 ¶ 37.

⁸⁹ *Id.* at 14194-14208 ¶¶ 68-103.

⁹⁰ For EBS stations, former section 74.932(d) provided that a station that had not operated for one year was considered to have permanently discontinued operation. 47 C.F.R. § 74.932(d) (2004). For BRS licensees, former section 21.44(a)(3) provided that a BRS license automatically forfeited upon the voluntary removal or alteration of facilities, so as to render the station not operational for a period of 30 days or more. 47 C.F.R. § 21.44(a)(3) (2004). Former section 21.303(d) required a licensee to turn in for cancellation or modification, as appropriate, a license if frequencies were unused for one year. 47 C.F.R. § 21.303(d) (2004).

⁹¹ *BRS/EBS R&O*, 19 FCC Rcd at 14254 ¶ 231. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*, WT Docket Nos. 03-66, *et al.*, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606, 5733 ¶ 303 (2006) (*BRS/EBS 3rd MO&O*).

application to require renewal applicants to certify that they are continuing to operate consistent with the applicable filed construction notification(s) (NT) or most recent authorization(s) (when no NT is required under the Commission's rules).⁹² We tentatively conclude that if a licensee makes the required certification and demonstrates substantial compliance with the Commission's rules and policies and the Communications Act, we will renew the license. Licensees in the site-based services thus would not be required to make a substantial service renewal showing. We tentatively conclude that the following services should be subject to this certification process:

- 220-222 MHz Service (site-based);⁹³
- 800/900 MHz (SMR and Business and Industrial Land Transportation Pool);⁹⁴
- Air-Ground Radiotelephone Service (General Aviation);⁹⁵
- Broadcast Auxiliary Service;⁹⁶
- Common Carrier Fixed Point-to-Point, Microwave Service;⁹⁷
- Digital Electronic Message Service;⁹⁸
- Industrial/Business Radio Pool;⁹⁹
- Local Television Transmission Service;¹⁰⁰
- Multiple Address Systems (site-based), excluding systems licensed to public safety entities;¹⁰¹
- Non-Multilateration Location and Monitoring Service;¹⁰²
- Offshore Radiotelephone Service;¹⁰³
- Paging and Radiotelephone Service (site-based);¹⁰⁴

⁹² It is possible that a site-based licensee will have been granted a license modification for which the construction will not need to be completed as of the renewal application filing date. The licensee will be able to include the authorized but not yet constructed facilities within the scope of the renewal application. In the event that the license is renewed with the authorized but not yet constructed parameters, and the licensee fails to construct pursuant to the modification authorization, the renewed license will no longer encompass those revised parameters.

⁹³ See 47 C.F.R. Pt. 90, Subpt. T.

⁹⁴ See 47 C.F.R. Pt. 90, Subpt. S.

⁹⁵ See 47 C.F.R. Pt. 22, Subpt. G.

⁹⁶ See 47 C.F.R. Pt. 74, Subpt. F.

⁹⁷ See 47 C.F.R. Pt. 101, Subpt. I.

⁹⁸ See 47 C.F.R. Pt. 101, Subpt. G.

⁹⁹ See 47 C.F.R. Pt. 90, Subpt. C.

¹⁰⁰ See 47 C.F.R. Pt. 101, Subpt. J.

¹⁰¹ See 47 C.F.R. Pt. 101, Subpt. O.

¹⁰² See 47 C.F.R. Pt. 90, Subpt. M.

¹⁰³ See 47 C.F.R. Pt. 22, Subpt. I.

- Private Carrier Paging,¹⁰⁵
- Private Operational Fixed Point-to-Point Microwave Service, excluding licenses held by public safety entities;¹⁰⁶ and
- Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service).¹⁰⁷

35. We believe that adoption of a streamlined certification process for renewal of licenses in these site-based services will avoid unduly burdening renewal applicants and Commission staff. At the same time, applying the certification process to site-based services will ensure that renewed licenses in these services are being operated as authorized. We request comment on our proposed identification of Wireless Radio Services subject to the certification requirement in lieu of a required substantial service showing. Interested parties that recommend that our designation of services be revised should specifically describe the proposed change and the rationale for any change. We also request comment whether, in our consideration of renewal applications involving site-based licenses, there are any additional factors we should consider.

c. Geographically and Site-Based Licensed Services—Other Requirements

36. As explained above, we propose to adopt a renewal showing requirement for renewal applicants in Wireless Radio Services licensed by geographic area and a streamlined certification requirement for renewal applicants in services licensed by site. Below, we propose to apply a single regulatory compliance demonstration requirement to all renewal applicants, whether licensed by geographic area or by site. We also propose to prohibit the filing of competing applications against such renewal applications and that, if a renewal application is denied, the associated spectrum generally will be returned to the Commission.

(i) Regulatory Compliance Demonstration

37. In the *700 MHz First Report and Order*, the Commission stated that in addition to demonstrating that they are providing substantial service to the public, renewal applicants must demonstrate “that they have substantially complied with all applicable Commission rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements.”¹⁰⁸ Such a regulatory compliance demonstration serves the public interest by facilitating the Commission’s evaluation of the character and other qualifications of a renewal applicant.¹⁰⁹ We therefore propose that renewal applicants in the geographic-area and site-based Wireless Radio Services identified in paragraphs 20 and 34, above, be required to demonstrate regulatory compliance.

38. To aid review of a renewal applicant’s regulatory compliance, we tentatively conclude that an applicant must file copies of all FCC orders¹¹⁰ finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the

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¹⁰⁴ See 47 C.F.R. Pt. 22, Subpt. E.

¹⁰⁵ See 47 C.F.R. Pt. 90, Subpt. P.

¹⁰⁶ See 47 C.F.R. Pt. 101, Subpt. H.

¹⁰⁷ See 47 C.F.R. Pt. 22, Subpt. F.

¹⁰⁸ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

¹⁰⁹ See 47 U.S.C. § 308(b).

¹¹⁰ FCC orders include letter rulings, which may or may not have been assigned a delegated authority number.

licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee (whether or not such an order relates specifically to the license for which renewal is sought). This disclosure requirement would apply to all orders finding such violations during the license term for which renewal is sought, including orders that are, or could be, the subject of administrative or judicial review. For purposes of this disclosure requirement, relevant FCC orders would include, but would not be limited to, any Notice of Apparent Liability for Forfeiture, Forfeiture Order, Admonishment, Notice of Violation, Memorandum Opinion and Order, or Order on Review finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee.¹¹¹ We propose to rely upon the definition of “affiliate” in section 1.2110(c)(5)¹¹² to define the scope of entities related to the renewal applicant that are encompassed within these proposed disclosure requirements.

39. If there are no FCC orders finding violations of the Communications Act or any FCC rule or policy, we propose that a licensee certify the absence of any such findings as part of the renewal application. We seek comment on the costs and benefits of our proposed framework to licensees, interested parties, and the Commission, and whether additional information would aid the Commission’s review of an applicant’s regulatory compliance.

(ii) Prohibition of Competing Renewal Applications

40. Consistent with the Commission’s renewal approach for the 700 MHz Commercial Services Band, we tentatively conclude to prohibit the filing of competing (*i.e.*, mutually exclusive) applications against renewal applications for the Wireless Radio Services identified above, whether licensed by site or geographic area.¹¹³ In the *700 MHz First Report and Order*, the Commission noted “the potential costs and the burdens [that competing applications] impose on both the Commission and licensees.”¹¹⁴ The Commission’s experience has shown that the comparative renewal process can result in protracted litigation that may be unduly burdensome for an incumbent licensee and strain available Commission resources.¹¹⁵ A renewal applicant may have to devote considerable resources to defend its authorization against competing applications, resources that might otherwise be used to improve service to the public. At bottom, the public interest is ill served if a renewal applicant must operate under a cloud of litigation.

41. We find that the Commission’s established petition to deny process¹¹⁶ affords interested parties an appropriate mechanism to challenge the level of service and qualifications of licensees seeking renewal. In this regard, the Commission found in the *700 MHz Report and Order* that the ability of a party to file a petition to deny and participate in an auction of spectrum if the licensed spectrum is returned to the Commission will provide “sufficient incentives to challenge inferior service or poor

¹¹¹ A Consent Decree would be a relevant FCC order for purposes of the disclosure requirement only to the extent that it includes an admission by the licensee of a violation of the Communications Act or any FCC rule or policy.

¹¹² 47 C.F.R. 1.2110(c)(5).

¹¹³ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093-8094 ¶¶ 76-77. Some of our Wireless Radio Services already provide no opportunity for the filing of competing renewal applications.

¹¹⁴ *Id.* at 8093 ¶ 76.

¹¹⁵ We note that when Congress sought to eliminate the comparative renewal process for broadcast stations, it recognized that the change would “lead to a more efficient method” of renewal and “should result in a significant cost saving to the Commission.” H.R. Rep. No. 104-204(I), at 123 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 91 (ultimately resulting in amendment of Section 309 of the Communications Act by adding new subsection (k), as part of the Telecommunications Act of 1996 (1996 Act)) (*House Committee Report*). See 47 U.S.C. § 309(k).

¹¹⁶ Existing provisions in Part 1 provide procedures for petitions to deny, application dismissals, and rules for subsequent re-licensing through competitive bidding. See generally 47 C.F.R. § 1.901 *et seq.*

qualifications of licensees at renewal.”¹¹⁷ Interested parties that might otherwise file a competing application would, under our proposed framework, have the opportunity to participate in the auction of spectrum recovered from any geographic licensee or to apply for spectrum recovered from a site-based licensee (provided the spectrum did not revert to a geographic overlay licensee). The Commission has repeatedly concluded that spectrum auctions most likely will result in the licensing of spectrum to a party that most highly values the spectrum.¹¹⁸ Moreover, as the Commission has moved from comparative licensing regimes to competitive bidding processes for awarding spectrum licenses, eliminating the filing of competing renewal applications will harmonize our renewal processes with those for granting initial authorizations.

42. We also find that the public interest would be served by preventing parties from interposing “strike” applications against a renewal applicant for possible anticompetitive purposes, to harass an applicant, or to exact a payoff.¹¹⁹ We note that in other contexts, the Commission has found that even “weak applicants who may have a very slim chance of prevailing can file no-risk, no-cost [competing renewal] applications because they are virtually assured of recovering at least attorney’s fees and costs for dismissing their applications.”¹²⁰ The comparative renewal process was never intended to invite such abuse, and specious challenges needlessly drain Commission resources and disserve the public interest.¹²¹ While abuse of process is not the driving force behind our tentative conclusion to eliminate comparative renewal applications, we nonetheless invite comment on whether such abuse, either actual or potential, is a concern to renewal applicants. We seek comment on the costs and benefits to the public, the Commission, and licensees that may be associated with our tentative conclusion to prohibit the filing of competing renewal applications.

(iii) Return of Spectrum to Commission If Renewal Application Denied

43. Consistent with the Commission’s approach for 700 MHz Commercial Services Band

¹¹⁷ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 76. We also note that when Congress proposed to eliminate the filing of competing applications against applications for renewal of broadcast authorizations, it found that such a change would “not jeopardize the ability of the public to participate actively in the renewal process through the use of petitions to deny and informal complaints.” *House Committee Report*, *supra* note 115, at 123.

¹¹⁸ See, e.g., *BRS/EBS R&O*, 19 FCC Rcd at 14265-66 ¶ 266 (2004) (stating that “[a]n auction is most likely to assign the license to the qualified licensee that most highly values it if the auction is open to all potentially qualified licensees”) (citing Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2360-2361 ¶¶ 70-71 (1994)).

¹¹⁹ Although section 1.935 of our rules provides that any potential settlement payment that a renewal applicant may make to a competing applicant to withdraw its filing is limited to the filing party’s reasonable and prudent expenses (*see* 47 C.F.R. § 1.935), we remain concerned that the potential for abuse of the Commission’s processes nevertheless exists. Abuses of the comparative renewal process can be difficult to prove. See, e.g., *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, *Second Further Notice of Inquiry and Notice of Proposed Rule Making*, BC Docket No. 81-742, 3 FCC Rcd 5179, 5182-83 ¶ 26 (1989) (stating there is “[n]o satisfactory direct method of divining intent . . . that is capable of separating wholly sincere applicants from those whose objective is simply to prey upon the inadequacies of the regulatory process for private gain.”).

¹²⁰ *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, *First Report and Order*, 4 FCC Rcd 4780, 4784 ¶ 31 (1989) (*1989 Broadcast Renewal Order*).

¹²¹ See, e.g., *id.* at 4782-83 ¶ 22.

licensees, we tentatively conclude that if a renewal applicant fails to demonstrate substantial service (for services licensed by geographic area) or does not certify that it is continuing to operate consistent with the applicable construction notification(s) or authorization(s), as applicable (for services licensed by site), its renewal application will be denied and its licensed spectrum generally will be returned automatically to the Commission for reassignment by auction or other mechanism that the Commission concludes would serve the public interest. We note that even if a licensee demonstrates substantial service or makes the required certification, the Commission could nevertheless find that a license should not be renewed based on substantial regulatory non-compliance (*e.g.*, where a licensee has been found to have abused Commission processes or committed fraud).

44. We also note that in the case of the non-renewal of a site-based license, the Commission has established a general policy of the spectrum reverting to the geographic area licensee on the same spectrum.¹²² We propose to continue the Commission's policy of having spectrum revert to a geographic area licensee if an underlying site-based authorization is not renewed. We tentatively conclude that adoption of these policies would serve the public interest and invite comment on our findings.

3. Wireless Radio Services Excluded From Rulemaking

45. Finally, we tentatively conclude that various Wireless Radio Services should not be affected by the renewal proposals in this rulemaking. Specifically, we tentatively conclude that we will not apply the revised renewal paradigm to Wireless Radio Services where operations are licensed by rule (and thus there is no "license" to renew) or to Wireless Radio Services that can be considered to involve a "personal" license or that have no construction obligation.

46. The following services are licensed by rule and therefore there is no individual license to renew (or to cancel automatically) and no basis to adopt any of the proposals discussed above:

- Citizens Band Radio Service;¹²³
- Dedicated Short Range Communications Service (On-Board Units operating in the 5850-5925 MHz band);¹²⁴
- Family Radio Service;¹²⁵
- Low Power Radio Service;¹²⁶
- Medical Device Radiocommunication Service;¹²⁷

¹²² See, *e.g.*, 47 C.F.R. §§ 27.1206 (defining the Geographic Service Area (GSA) for incumbent site-based licensees of BRS stations and stating that, "[i]f the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the [geographic] licensee . . ."); 101.1331 (same concerning frequencies associated with incumbent authorizations in the 928/959 MHz bands (Multiple Address Systems)). See also 47 C.F.R. §§ 80.385(c) (providing that any AMTS frequency blocks that are "recovered" will "revert automatically to the holder of the geographic area license within which such frequencies are included," and "where there is no geographic area licensee," the blocks will be "retained by the Commission for future licensing."); 90.175(n) (same regarding any recovered channels in the 800 MHz SMR service).

¹²³ See 47 C.F.R. Pt. 95, Subpt. D.

¹²⁴ See 47 C.F.R. Pt. 95, Subpt. L (On-Board Units operating in the 5850-5925 MHz band are licensed by rule).

¹²⁵ See 47 C.F.R. Pt. 95, Subpt. B.

¹²⁶ See 47 C.F.R. Pt. 95, Subpt. G.

¹²⁷ See 47 C.F.R. Pt. 95, Subpt. I.

- Multi-Use Radio Service;¹²⁸
- Personal Locator Beacons;¹²⁹
- Radio Control Radio Service;¹³⁰ and
- Wireless Medical Telemetry Service.¹³¹

47. The following services, which we also propose to exclude from the proposals in this Notice, involve licenses that are granted on a personal basis or that have no construction/performance requirement. Without a construction obligation, our proposal to require renewal applicants to make a showing of substantial service or to certify that they are operating consistent with prior filings regarding construction is inapplicable.

- 70-80-90 GHz Service (licenses in these bands are non-exclusive and do not authorize transmission unless/until each “pencil beam” link is registered in a private-sector database);¹³²
- Aeronautical Advisory Stations (Unicom);¹³³
- Aeronautical Enroute and Aeronautical Fixed Stations;¹³⁴
- Aeronautical Multicom Stations;¹³⁵
- Aeronautical Search and Rescue Stations;¹³⁶
- Aeronautical Utility Mobile Stations;¹³⁷
- Aircraft Stations;¹³⁸
- Airport Control Tower Stations;¹³⁹
- Alaska Fixed Stations;¹⁴⁰
- Amateur Radio Service;¹⁴¹

¹²⁸ See 47 C.F.R. Pt. 95, Subpt. J.

¹²⁹ See 47 C.F.R. Pt. 95, Subpt. K.

¹³⁰ See 47 C.F.R. Pt. 95, Subpt. C.

¹³¹ See 47 C.F.R. Pt. 95, Subpt. H.

¹³² See 47 C.F.R. Pt. 101, Subpt. Q.

¹³³ See 47 C.F.R. Pt. 87, Subpt. G.

¹³⁴ See 47 C.F.R. Pt. 87, Subpt. I.

¹³⁵ See 47 C.F.R. Pt. 87, Subpt. H.

¹³⁶ See 47 C.F.R. Pt. 87, Subpt. M.

¹³⁷ See 47 C.F.R. Pt. 87, Subpt. L.

¹³⁸ See 47 C.F.R. Pt. 87, Subpt. F.

¹³⁹ See 47 C.F.R. Pt. 87, Subpt. O.

¹⁴⁰ See 47 C.F.R. Pt. 80, Subpt. O.

- Automatic Weather Stations;¹⁴²
- Aviation Support Stations;¹⁴³
- Commercial Radio Operator License Program;¹⁴⁴
- Flight Test Stations;¹⁴⁵
- General Mobile Radio Service;¹⁴⁶
- Maritime Support Stations;¹⁴⁷
- Part 80 Operational Fixed Stations;¹⁴⁸
- Private Coast Stations and Marine Utility Stations;¹⁴⁹
- Radiodetermination Service Stations;¹⁵⁰
- Ship Stations;¹⁵¹ and
- Wireless Broadband Services in the 3650–3700 MHz Band (licenses in these bands are nationwide, non-exclusive, and do not authorize transmission unless and until each fixed or base station is registered; an unlimited number of base and fixed stations may be registered (not licensed) in this band on a nationwide, non-exclusive basis).¹⁵²

48. We request comment on our proposed identification of Wireless Radio Services to be excluded entirely from our revised renewal rules. Interested parties that recommend that our designation

(Continued from previous page) _____

¹⁴¹ See 47 C.F.R. Pt. 97.

¹⁴² See 47 C.F.R. Pt. 87, Subpt. S.

¹⁴³ See 47 C.F.R. Pt. 87, Subpt. K.

¹⁴⁴ See 47 C.F.R. Pt. 13.

¹⁴⁵ See 47 C.F.R. Pt. 87, Subpt. J.

¹⁴⁶ See 47 C.F.R. Pt. 95, Subpt. A.

¹⁴⁷ See 47 C.F.R. Pt. 80, Subpt. N.

¹⁴⁸ See 47 C.F.R. Pt. 80, Subpt. L.

¹⁴⁹ See 47 C.F.R. Pt. 80, Subpt. K.

¹⁵⁰ See 47 C.F.R. Pt. 80, Subpt. M.

¹⁵¹ See 47 C.F.R. § 80.13(c).

¹⁵² See 47 C.F.R. Pt. 90, Subpt. Z. The Commission delegated to the Wireless Telecommunications Bureau the authority to adopt rules regarding the reporting of database information, including reporting of any license or station transfers. In November 2007, the Bureau emphasized that the requirement to register fixed and base stations prior to operation is ongoing and that the Commission's rules require registrations for "unused" fixed and base stations to be deleted. See 47 C.F.R. § 90.1307. For purposes of this requirement, the Bureau stated that it will generally consider a fixed or base station to be "unused" if it has not operated for one year or more. See Wireless Telecommunications Bureau Announces Start Date for Licensing and Registration Process for the 3650-3700 MHz Band, *Public Notice*, 22 FCC Rcd 19802, 19811 (2007). The Bureau further noted that additional reporting or periodic certification requirements may be necessary to maintain accurate and current registration data and it reserved the right to revisit the matter after the Bureau, as well as licensees, have the opportunity to gauge the effectiveness of the existing requirements for this service. *Id.* at 19810-11.

of services be revised should describe in detail the nature of the proposed change and the rationale for any such change.

B. Permanent Discontinuance of Operations for Wireless Radio Services

49. We propose to adopt a uniform regulatory framework governing the permanent discontinuance of operations for Wireless Radio Services under Parts 22, 24, 27, 80, 90, 95 and 101 of the Commission's rules. Our goal is to adopt a standardized approach for all services, whether licensed by geographic area or by site, to the maximum extent practicable. Our rules governing the permanent discontinuance of operations are intended to afford Wireless Radio Services licensees operational flexibility to use their spectrum efficiently while ensuring that spectrum does not lay idle for extended periods.¹⁵³

50. Because an authorization will "automatically terminate, without specific Commission action, if service is *permanently discontinued*,"¹⁵⁴ it is imperative that our rules provide a clear and consistent definition of permanent discontinuance of operations; they do not. The definition varies by service, and some service rules contain no clear definition.¹⁵⁵ We believe that standardizing the definition of permanent discontinuance of operations will serve the public interest by providing licensees and other interested parties much needed certainty and by affording similarly-situated licensees and like services comparable regulatory treatment.

1. Current Requirements

51. Under section 1.955(a)(3), "[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section."¹⁵⁶ Part 22,¹⁵⁷ for example, provides that a "station that has not provided *service to subscribers* for 90 continuous days is considered to have been permanently discontinued"¹⁵⁸ Section 90.157(a), which applies to most Part 90 services, provides that "[a]n authorization shall cancel automatically upon permanent discontinuance of operations."¹⁵⁹ The rule further provides that "for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued."¹⁶⁰

52. In contrast to the Part 22 and Part 90 rules, many services, including those authorized by competitive bidding (such as our Part 24 Personal Communications Service rules and our Part 27

¹⁵³ See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, PR Docket No. 90-481, *Report and Order*, 6 FCC Rcd 7297, 7299 ¶ 14 (1991) ("The year-long period for discontinuance strikes a balance between the licensee's need for operational flexibility and our need to ensure efficient utilization of authorized channels.").

¹⁵⁴ 47 C.F.R. § 1.955(a)(3) (emphasis added). Section 1.955(a)(3) requires licensees to "notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation." *Id.* We emphasize that an authorization automatically terminates if service is permanently discontinued, even if a licensee fails to file the required form requesting license cancellation.

¹⁵⁵ In some services, a licensee must obtain prior Commission authorization before voluntarily discontinuing service. See, e.g., 47 C.F.R. § 27.66(b), citing 47 C.F.R. § 63.71.

¹⁵⁶ 47 C.F.R. § 1.955(a)(3).

¹⁵⁷ Part 22 governs operations in the Paging and Radiotelephone Service, Rural Radiotelephone Service, Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, and Offshore Radiotelephone Service.

¹⁵⁸ 47 C.F.R. § 22.317 (emphasis added).

¹⁵⁹ 47 C.F.R. § 90.157(a).

¹⁶⁰ *Id.*

Miscellaneous Wireless Communication Services rules) contain no definition of permanent discontinuance. Thus, subject to meeting any service-specific construction and renewal requirements, a Part 24 or Part 27 licensee might conclude that it could discontinue service for a long period without fear of automatic license termination. Licensees in these services thus might retain their spectrum while it lies idle for extended periods, while Part 22 licensees (including cellular service licensees, which may provide directly competing services) are subject to automatic license termination if they discontinue service to subscribers for 90 days (120 days with a 30-day extension).¹⁶¹ The public interest is not served by such marked regulatory disparities.

2. Proposed Requirements

53. As explained below, we believe that adoption of a uniform discontinuance of service rule for Part 22, 24, 27, 80, 90, 95 and 101 Wireless Radio Services will serve the public interest by ensuring that similarly situated licensees are afforded comparable regulatory treatment. Under our proposal, Part 24 and Part 27 licensees would be definitely subject to the consequence of a discontinuance of service rule—*i.e.*, automatic termination of an authorization. We also believe that adoption of uniform permanent discontinuance policies will serve the public interest by ensuring that valuable spectrum is not underutilized, and by providing certainty to licensees, investors, and other interested parties, which will facilitate business and network planning. Accordingly, we seek comment on the appropriate definition of permanent discontinuance of operations and whether to adopt a single definition for Wireless Radio Services licensed either by geographic area or by site.

54. We seek comment on the length of the period that should be used to define permanent discontinuance of service that would trigger automatic license termination. Our goal is to strike an appropriate balance between providing licensees operational flexibility while ensuring that spectrum does not lie fallow. As noted above, Part 22 licensees are now afforded up to a 120-day discontinuance of service period. Technologies continue to evolve rapidly and we seek to encourage technological innovation by Commission licensees. We believe that a discontinuance of service period longer than 90 or 120 days, such as 180 days, might better enable licensees to implement technology upgrades involving reconfiguration and possible relocation of cell sites and other network elements.

55. We seek comment on the costs and benefits of defining permanent discontinuance as 180 consecutive days or 12 consecutive months during which a licensee does not operate or, for certain services, does not serve at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We also request that interested parties address whether a 180-day or 12-month discontinuance period would enable spectrum warehousing.

56. Subject to certain limited exceptions noted below, we tentatively conclude that for any Wireless Radio Service for which prior approval to discontinue service is not required, permanent discontinuance of service should be defined as 180 consecutive days during which a licensee does not operate or, in the case of Commercial Mobile Radio Service providers,¹⁶² does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We propose to consolidate the Commission's permanent discontinuance of service requirements in a new section 1.953 (set forth in Appendix A), and seek detailed comment on the proposed language of section 1.953, and all aspects of our proposal. We point out that new section 1.953 would require a licensee that permanently discontinues service to notify the Commission of the discontinuance by filing FCC Form

¹⁶¹ See 47 C.F.R. § 22.317 (“any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90 day period and provided a date on which operation will resume, which date must not be in excess of 30 additional days”).

¹⁶² See *supra* note 23, defining CMRS.

601 or 605 requesting license cancellation. We seek comment on this provision and whether there may be alternatives to such a self-reporting requirement.

57. We also tentatively conclude that that our proposed permanent discontinuance rule should apply commencing on the date a licensee makes its initial construction showing or notification. Under this approach, if a CMRS provider makes a five-year construction showing, it would have to serve at least one subscriber that is not affiliated with, controlled by, or related to it in any ensuing 180-day period or else it would be deemed to have permanently discontinued service and its license would automatically terminate without specific Commission action. We question whether in the Narrowband PCS, for example, it would be inequitable for the Commission to reclaim spectrum from a licensee that meets its five-year construction obligation, and then discontinues operations for 180 days before the end of its license term, while only applying a ten-year construction obligation to licensees that elect to demonstrate substantial service. We seek comment whether, under these circumstances, the public interest would be better served if the Commission applied its permanent discontinuance of operations rule only after the initial license term.

58. We note that if the Commission were to adopt a 180-day discontinuance period, a licensee could request more time to implement a network upgrade or to complete a distress sale, for example. The text of proposed section 1.953(f) sets forth a process under which a request for a longer discontinuance period may be filed for good cause, and subject to the requirement that it is filed at least 30 days before the end of the discontinuance period. Under the proposed rule, the filing of a request would automatically extend the discontinuance period a minimum of the latter of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request. We seek comment on these proposed provisions.

59. In addition, we tentatively conclude that operation of so-called channel keepers—devices that transmit test signals, tones and/or color bars, for example—will not constitute operation for the purposes of our permanent discontinuance rules.¹⁶³ We seek comment below on the application of this proposed framework to various services.

a. Part 22 Public Mobile Services

60. The Commission's Part 22 rules govern operations in the Paging and Radiotelephone Service, Rural Radiotelephone Service, Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, and Offshore Radiotelephone Service.¹⁶⁴ Under Part 22, "any station that has not provided *service to subscribers* for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90 day period and provided a date on which operations will resume, which date must not be in excess of 30 additional days."¹⁶⁵ *Service to subscribers* is defined as "[s]ervice to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier."¹⁶⁶ We seek comment on whether for each Part 22 service (some of which are licensed by geographic area and some by site), the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We seek specific

¹⁶³ See Application of San Diego MDS Company, *Memorandum Opinion and Order*, 19 FCC Rcd 23120, 23126-27 ¶¶ 13-14 (2004) (*San Diego MDS*). See also *BRS/EBS 3rd MO&O*, 21 FCC Rcd at 5731 ¶ 297 (favorably citing *San Diego MDS* when affirming that "transmission of test signals and/or color bars by a BRS/EBS licensee or lessee does not constitute substantial service").

¹⁶⁴ 47 C.F.R. Part 22, Subpts. E, F, G, H, and I.

¹⁶⁵ 47 C.F.R. § 22.317 (emphasis added).

¹⁶⁶ 47 C.F.R. § 22.99.

comment on whether the additional operational flexibility that would be afforded by a 180-day or longer period would be beneficial.

b. Part 24 Personal Communications Services

61. Section 1.955(a)(3) provides that an authorization will “automatically terminate, without specific Commission action, if service is permanently discontinued.”¹⁶⁷ The rule also provides that “[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.”¹⁶⁸ For many of the Commission’s services authorized by competitive bidding (such as PCS), the specific service rules do not define permanent discontinuance of operations.

62. We seek comment on whether, for Broadband and Narrowband PCS, the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We note that the mid- and end-of-term performance requirements for these services vary based on the size of a market area and authorized bandwidth.¹⁶⁹ Moreover, a narrowband PCS licensee may elect to forego making a five-year mid-term geographic area or population-based construction showing and, instead, elect to demonstrate substantial service by the end of its license term.¹⁷⁰

c. Part 27 Miscellaneous Wireless Communications Services

63. The Commission’s Part 27 Miscellaneous Wireless Communications Services include: (1) 700 MHz Commercial Service (Lower and Upper 700 MHz Bands);¹⁷¹ (2) 700 MHz Guard Band Service;¹⁷² (3) 1.4 GHz Service;¹⁷³ (4) 1.6 GHz Service;¹⁷⁴ (5) Advanced Wireless Service (AWS-1, 1710-1755 MHz, 2110-2155 MHz);¹⁷⁵ (6) Wireless Communications Service (WCS, 2305-2320 and 2345-2360 MHz),¹⁷⁶ and (7) the Broadband Radio Service and Educational Broadband Service.¹⁷⁷ Part 27 does not define permanent discontinuance for any of these services. Section 27.66(b), however, requires fixed common carriers in any of these services to obtain prior Commission authorization before voluntarily discontinuing service to a community or part of a community, which will be granted “within 31 days after filing if no objections have been received.”¹⁷⁸ Fixed non-common carrier licensees, on the other hand, may voluntarily discontinue service without prior Commission authorization and need only provide the

¹⁶⁷ 47 C.F.R. § 1.955(a)(3).

¹⁶⁸ *Id.*

¹⁶⁹ See 47 C.F.R. §§ 24.103, 24.203 (narrowband PCS and broadband PCS construction requirements, respectively).

¹⁷⁰ 47 C.F.R. § 24.103(d).

¹⁷¹ 47 C.F.R. Pt. 27, Subpt. F.

¹⁷² 47 C.F.R. Pt. 27, Subpt. G.

¹⁷³ 47 C.F.R. Pt. 27, Subpt. I.

¹⁷⁴ 47 C.F.R. Pt. 27, Subpt. J.

¹⁷⁵ 47 C.F.R. Pt. 27, Subpt. L.

¹⁷⁶ 47 C.F.R. Pt. 27, Subpt. D.

¹⁷⁷ 47 C.F.R. Pt. 27, Subpt. M.

¹⁷⁸ 47 C.F.R. § 27.66(b), citing 47 C.F.R. § 63.71.

Commission notice within seven days of such discontinuance.¹⁷⁹

64. Many Part 27 licensees must, as a performance requirement (*i.e.*, construction requirement), make a showing of “substantial service” in their license area during their license term.¹⁸⁰ For these Part 27 licensees, we propose to apply the permanent discontinuance rule effective on the date that a licensee makes its performance showing. Thus, if a licensee makes its substantial service performance showing in year six of its initial license term, thereafter it must serve at least one subscriber that is not affiliated with, controlled by, or related to it in any ensuing 180-day period or else it would be deemed to have permanently discontinued service and its license would automatically terminate without specific Commission action. We seek comment on application of our proposed permanent discontinuance rule to licensees that must make a showing of substantial service in their license area within their initial license term.

65. Rather than demonstrate substantial service as their performance requirement, Part 27 licensees that hold 700 MHz Commercial Services Band authorizations for Blocks A, B, C, and E¹⁸¹ must satisfy population-based or geographic-area performance requirements.¹⁸² Licensees in these spectrum blocks must make their initial construction showing no later than June 13, 2013, or four years from license grant if an initial authorization is granted after June 13, 2009.¹⁸³ We propose to apply a permanent discontinuance rule to these licensees effective upon the date that a licensee makes its first performance showing. We note that, unlike Narrowband PCS licensees, this group of 700 MHz licensees will not have the option of electing to show substantial service at the end of their license term in lieu of making an interim performance showing. Under these circumstances, we find the public interest would be served if we apply our proposed permanent discontinuance rule effective upon a licensee making its first performance showing. We seek comment on our findings and application of our proposed permanent discontinuance rules to licensees for 700 MHz Blocks A, B, C, and E.

66. *Broadband Radio Service and Educational Broadband Service.* As noted above, the Commission is implementing a new plan for BRS and EBS.¹⁸⁴ To enable licensees to transition to the new band plan and deploy new and innovative wireless services, the Commission eliminated its discontinuance of service rules,¹⁸⁵ and adopted a substantial service standard under which all licensees must demonstrate substantial service on or before May 1, 2011.¹⁸⁶ We tentatively conclude that it would not serve the public interest to re-impose a discontinuance of service rule on BRS and EBS at this time. The transition to the new band plan is ongoing, and licensee transition reports indicate that many are discontinuing existing operations as they transition.¹⁸⁷ Accordingly, we propose to maintain the right of

¹⁷⁹ 47 C.F.R. § 27.66(c).

¹⁸⁰ 47 C.F.R. § 27.14(a). As explained above, a substantial service performance showing is not as comprehensive as the substantial service showing required to support renewal of a license. *See supra* paras. 21-23.

¹⁸¹ Block A corresponds to the 698–704 MHz and 728–734 MHz bands, Block B to the 704–710 MHz and 734–740 MHz bands, Block C to the 746–757 MHz and 776–787 MHz bands, and Block E to the 722–728 MHz band.

¹⁸² 47 C.F.R. § 27.14(g), (h), (i).

¹⁸³ 47 C.F.R. § 27.14 (g), (h).

¹⁸⁴ *See supra* paras. 30-32.

¹⁸⁵ *See supra* para. 31 and note 90.

¹⁸⁶ *BRS/EBS R&O*, 19 FCC Rcd at 14254 ¶ 231. *See BRS/EBS 3rd MO&O*, 21 FCC Rcd at 5733 ¶ 303.

¹⁸⁷ *See* Transition Completion Notifications filed in WT Docket No. 06-136.

BRS and EBS licensees to discontinue service during the transition, and seek comment on the appropriate date thereafter on which to apply discontinuance of service rules to BRS and EBS.

d. Part 80 Safety and Special Radio Services

67. Part 80, which governs stations in the Maritime Services, does not currently define permanent discontinuance of operations. We note that section 80.31 provides that “[w]ireless telecommunications carriers subject to this part [80] must comply with the discontinuance of service provisions of part 63 of this chapter,”¹⁸⁸ but this rule has limited applicability.¹⁸⁹ We seek comment on whether to define permanent discontinuance of service for Part 80 stations as 180 consecutive days during which a licensee does not operate or, in the case of certain stations, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

e. Part 90 Private Land Mobile Radio Services

68. Section 90.157(a) provides that “[a]n authorization shall cancel automatically upon permanent discontinuance of operations.”¹⁹⁰ The rule further provides that “[u]nless stated otherwise in this part or in a station authorization, for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.”¹⁹¹ This rule applies to all Part 90 services, except trunked Specialized Mobile Radio (SMR) Service, which is discussed below. Some Part 90 services are used for seasonal operations such as ski resort operations or beach patrols. Because such operations may be conducted for less than six months in any given 12-month period, we intend to retain the one-year discontinuance of operations rule. We do, however, propose to modify this rule by also requiring service to at least one unaffiliated subscriber during the one-year period if the licensed spectrum is used for Commercial Mobile Radio Service (CMRS) purposes.¹⁹² We would thus define permanent discontinuance for services licensed as CMRS under Part 90 as a 12-month period during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. Licenses used for private, internal communications do not involve the provision of service to unaffiliated subscribers, so we propose to retain the existing discontinuance of operations test for these types of licenses. We seek comment on our proposed approach.

f. Part 90 Specialized Mobile Radio Service

69. Section 90.631(f), which governs permanent discontinuance of trunked Specialized Mobile Radio (SMR) Service operations, is similar to section 22.317, governing permanent discontinuance of operations for all Part 22 Public Mobile Services. The rule provides that an SMR “licensee with facilities that have discontinued operations for 90 continuous days is presumed to have permanently discontinued operations,” unless it notifies the Commission “prior to the end of the 90 day period and provides a date

¹⁸⁸ 47 C.F.R. § 80.31.

¹⁸⁹ In 1994, the Commission determined to forbear from applying section 214 market exit requirements to CMRS providers. *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, 1480-81 ¶ 182 (1994). *See also* 47 C.F.R. § 20.15(b)(3) (CMRS providers are not required to “[s]ubmit applications for new facilities or discontinuance of existing facilities”). Section 80.31 thus only applies to Part 80 licenses to the extent they are providing international (high seas) public coast service or fixed common carrier point-to-point service.

¹⁹⁰ 47 C.F.R. § 90.157(a).

¹⁹¹ *Id.*

¹⁹² *See supra* note 23, defining CMRS.

on which operation will resume, which date must not be in excess of 30 additional days.”¹⁹³ Under the rule, a trunked SMR base station “is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation.”¹⁹⁴ We propose to conform our requirements for permanent discontinuance for Part 90 trunked SMR and Part 22 Public Mobile Services. Accordingly, we seek comment on whether, for Part 90 trunked SMR Service, the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We encourage parties to address whether the practical effect of the rule would be undermined by not requiring service to at least two associated mobile stations, or one control station and one mobile station, as section 90.631(f) currently provides.

g. Part 95 218-219 MHz Service

70. Part 95 does not currently define permanent discontinuance of operations for licensees in the 218-219 MHz Service.¹⁹⁵ We seek comment on whether for 218-219 MHz Service providers, the public interest would be served by defining permanent discontinuance of operations as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

h. Part 101 Fixed Microwave Services

71. Section 101.65(b) provides that any Part 101 “station which has not operated for one year or more is considered to have been permanently discontinued.”¹⁹⁶ We note that section 101.65(a), which applies to all Part 101 stations, provides that “a license will be automatically forfeited in whole or in part . . . upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.”¹⁹⁷ We seek comment on the relationship of this “30-day” rule to our proposed 180-day permanent discontinuance rule, including whether the rule should be eliminated or modified in any respect.

C. Geographic Partitioning and Spectrum Disaggregation Rules and Policies

72. As explained below, we tentatively conclude that the public interest would be well served if we revise our geographic partitioning and spectrum disaggregation rules¹⁹⁸ to require each party to such an arrangement to independently satisfy construction obligations under the applicable service rules. The Commission’s experience with implementation of partitioning and disaggregation across myriad wireless radio services indicates that parties can, and sometimes do, manipulate the requirements in ways that result in spectrum in some services lying fallow for lengthy periods. We therefore seek to eliminate any provisions in our partitioning and disaggregation rules that enable parties to avoid timely construction.

73. Our approach is intended to ensure that valuable spectrum does not lie fallow to the public’s detriment, while still affording wireless service providers flexibility to configure geographic area licenses

¹⁹³ 47 C.F.R. § 90.631(f).

¹⁹⁴ *Id.*

¹⁹⁵ See 47 C.F.R. Pt. 95, Subpt. F.

¹⁹⁶ 47 C.F.R. § 101.65(b).

¹⁹⁷ 47 C.F.R. § 101.65(a).

¹⁹⁸ In geographic partitioning, a licensee assigns a portion of its licensed area to a third party, which then becomes the licensee for the partitioned area. In spectrum disaggregation, a licensee assigns discrete portions or “blocks” of its licensed spectrum in a licensed area to a third party, which then becomes the licensee for the disaggregated spectrum.

and spectrum blocks to meet their operational needs. Our approach also will provide licensees greater regulatory certainty by eliminating service-specific inconsistencies regarding satisfaction of performance requirements when spectrum is partitioned or disaggregated. Harmonization of these rules across wireless radio services, moreover, will place licensees in different services on more comparable regulatory footing to the extent that partitioning or disaggregation is permitted in specific services.

1. Current Requirements

74. In the seminal 1996 *CMRS Partitioning and Disaggregation Order*, the Commission adopted geographic partitioning and spectrum disaggregation rules for Broadband PCS. The Commission sought to provide licensees “flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve.”¹⁹⁹ The Commission echoed these goals when it subsequently adopted partitioning and disaggregation rules akin to the PCS rules on a service-by-service basis, including in the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) Services,²⁰⁰ 39 GHz Service,²⁰¹ Wireless Communications Service (WCS),²⁰² 220-222 MHz Service,²⁰³ and Cellular Radiotelephone Service.²⁰⁴

75. In adopting partitioning and disaggregation rules and policies, the Commission has sought to promote multiple, albeit sometimes competing, goals. The Commission specifically envisioned that partitioning and disaggregation would expedite the provision of service to rural and other underserved

¹⁹⁹ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21831 ¶ 1 (1996) (*CMRS Partitioning and Disaggregation Order*). The Commission’s stated goals were to: “(1) facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; (2) increase competition by allowing market entry by new entrants; and (3) expedite the provision of service to areas that otherwise may not receive broadband PCS service in the near term.” *Id.*

²⁰⁰ See Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Second Report and Order*, 12 FCC Rcd 19079, 19127-54 ¶¶ 138-227 (1997) (*800 MHz Second Report and Order*) (adopting partitioning and disaggregation rules for all 800 MHz and 900 MHz SMR licensees).

²⁰¹ See Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18634-37 ¶¶ 70-74 (1997) (*39 GHz Report and Order*) (adopting partitioning and disaggregation rules for licensees in the 39 GHz band).

²⁰² See Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), GN Docket No. 96-228, *Report and Order*, 12 FCC Rcd 10785, 10834-10839 ¶¶ 92-103 (1997) (*WCS Report and Order*) (adopting partitioning and disaggregation rules for WCS licensees).

²⁰³ See Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Geographic Partitioning and Spectrum Disaggregation for the 220-222 MHz Service, *Fifth Report and Order*, 13 FCC Rcd 24615 (1998) (*220 MHz Fifth Report and Order*) (subsequent history omitted).

²⁰⁴ See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, *Second Report and Order*, 15 FCC Rcd 10432, 10438-39 ¶ 15 (2000) (adopting partitioning rules for cellular unserved area licensees and disaggregation rules for all cellular licensees).

areas of America as well as to niche markets.²⁰⁵ These goals remain paramount today as we develop a national strategy to extend the promise of broadband to all Americans.²⁰⁶

76. The Commission also has previously determined that partitioning and disaggregation would promote “the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service.”²⁰⁷ It thus adopted rules that provide geographic-area licensees discretion to determine the amount of spectrum they will occupy and the area they will serve consistent with their business plan, which may not necessarily coincide with predetermined spectrum blocks and geographic areas of the licenses in a specific service. In the *700 MHz First Report and Order*, for example, the Commission “permit[ted] geographic partitioning of any service area defined by the partitioner and partitionee, spectrum disaggregation without restriction on the amount of spectrum to be disaggregated and combined partitioning and disaggregation.”²⁰⁸ The Commission also sought to increase competition through its partitioning and disaggregation policies by enabling market entry.²⁰⁹ Numerous licensees and others have availed themselves of these options.²¹⁰

77. While seeking to afford licensees the significant flexibility described above, the Commission also has sought to ensure that licensees meet applicable service performance obligations (*i.e.*, construction and operation). The Commission has explained that “[t]he goal of our construction requirements in both the partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place.”²¹¹ Although the Commission has reiterated this goal when specifying performance requirements for partitioning and disaggregation across numerous wireless radio services, the text of the rules varies considerably across services, and often without a detailed explanation for the variations. Some of these variations have enabled parties to manipulate the requirements in unforeseen ways that result in spectrum in some services lying fallow for lengthy periods. We seek to rectify this problem.

a. Partitioning

78. The Commission’s partitioning rules currently provide licensees several options to meet their construction obligations.

²⁰⁵ See, e.g., *CMRS Partitioning and Disaggregation Order*, 11 FCC Rcd at 21843 ¶ 14 (“increasing the number of parties that may obtain partitioned PCS licenses will lead to more efficient use of PCS spectrum and will speed service to underserved or rural areas”).

²⁰⁶ See, e.g., *Connecting America: The National Broadband Plan* (2010), available at <http://www.broadband.gov/plan/>; *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, 2009 WL 1480862 (F.C.C.) (May 22, 2009) (*Rural Broadband Report*), available at <http://wireless.fcc.gov/outreach/ruralbroadband>.

²⁰⁷ *CMRS Partitioning and Disaggregation Order*, 11 FCC Rcd at 21833 ¶ 1.

²⁰⁸ See Service Rules for the 746-764 and 776-794 MHz Bands, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 507 ¶ 75 (2000) (*700 MHz First Report and Order*) (subsequent history omitted).

²⁰⁹ See, e.g., *WCS Report and Order*, 12 FCC Rcd at 10839 ¶ 103 (“geographic partitioning and spectrum disaggregation rules, while not a substitute for licensing directly from the Commission, nevertheless will help to eliminate market entry barriers, consistent with Section 257 of the Communications Act, by providing smaller, less capital-intensive areas and spectrum blocks which are more accessible by small business entities”).

²¹⁰ As of May 5, 2010, Commission records reflect the filing of 1,210 applications involving 3,730 licenses. Of the 3,730 licenses, 1,080 involved partitioning, 1,851 involved disaggregation, and 799 involved both partitioning and disaggregation.

²¹¹ *CMRS Partitioning and Disaggregation Order*, 11 FCC Rcd at 21864 ¶ 61.

79. *Independent Construction.* In nearly all services that provide for geographic partitioning, parties may elect to independently satisfy the construction requirements for their respective partitioned geographic license areas.²¹² Where each party elects to meet the construction obligation for its partitioned licensed area, it knows with certainty that its actions—and its actions alone—regarding construction will determine whether its license is subject to automatic cancellation for deficient construction.

80. *Collective Construction.* In the more recent *700 MHz Second Report and Order*, the Commission determined that because of the more rigorous performance requirements it was adopting for the 700 MHz Commercial Services Band licenses that remained to be auctioned²¹³—including four-year and end-of-term benchmarks and “keep-what-you-use” policies—it should modify the Part 27 partitioning and disaggregation rules to “ensur[e] that this 700 MHz spectrum is used at least to the same extent as it would have been had partitioning or disaggregation not occurred.”²¹⁴ The Commission sought “to provide flexibility to licensees and third parties to enter into partitioning and disaggregation arrangements that will, *inter alia*, facilitate the provision of new services to consumers, including consumers in unserved and underserved areas.”²¹⁵

81. The Commission established a partitioning option allowing parties to “collectively share responsibility for meeting the construction requirement for the entire pre-partition geographic license area.”²¹⁶ With collective responsibility, each licensee must seek to ensure that the entire area or population (if applicable) of the combined partitioned licenses is served consistent with the applicable construction requirements.²¹⁷ If the parties collectively fail to meet the requirements, then both will be subject to a range of penalties, including the possible loss of their licenses.²¹⁸ The Commission provided this option to enable parties to share the cost of meeting the stricter performance requirements.²¹⁹

82. *Partitioner-only Construction.* Many wireless service rules allow the partitioner to certify that it has met or will meet the construction requirement for the entire pre-partitioned geographic license area. But there are significant variations in the rules that implement this option. Our Broadband PCS rules, for example, provide that if a partitioner certifies that it has met or will meet the construction requirement, the partitionee still must satisfy the requirements for substantial service for the partitioned license area.²²⁰ This showing is required to obtain license renewal and is distinct from any end-of-term

²¹² See, e.g., 47 C.F.R. §§ 27.15(d)(1)(1) (most Part 27 WCS); 101.1323(c)(2) (Multiple Address Systems).

²¹³ The authorizations are for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, and Blocks C, C1, and C2 in the 746-757 MHz and 776-787 MHz bands.

²¹⁴ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15357 ¶ 183 (2007) (*700 MHz Second Report and Order*) (subsequent history omitted).

²¹⁵ *Id.* at 15356 ¶ 183.

²¹⁶ See, e.g., 47 C.F.R. § 27.15(d)(1)(ii). This rule applies to authorizations in Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, and Blocks C in the 746-757 MHz and 776-787 MHz bands.

²¹⁷ *700 MHz Second Report and Order*, 22 FCC Rcd at 15357 ¶ 185.

²¹⁸ 47 C.F.R. § 27.15(d)(1)(ii).

²¹⁹ *700 MHz Second Report and Order*, 22 FCC Rcd at 15357 ¶ 185.

²²⁰ 47 C.F.R. § 24.714(e)(1)(ii).

construction requirement. The required showing promotes beneficial spectrum use because a partitionee risks automatic cancellation of its license if it fails to make the requisite renewal showing.

83. Other services, such as the Paging and Radiotelephone Service and 900 MHz SMR Service, provide that where the original licensee elects to meet the coverage requirements for the pre-partitioned geographic license area and fails, “the partitionee must meet only the requirements for renewal of its authorization for the partitioned license area.”²²¹ To the extent that the requirements for renewal are not defined to include an actual service requirement, licensees in some services could argue that if they are otherwise compliant with Commission rules and policies and the Act, they should be afforded renewal despite their spectrum remaining idle.

84. Section 27.15(d)(1)(i)—which applies to licensees in the 1.4 GHz, 1.6 GHz, 2.3 GHz, and certain 700 MHz bands—takes a slightly different approach. The rule provides that where “the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.”²²² As explained above, in 2007, the Commission adopted a requirement that all 700 MHz Commercial Service Band licensees demonstrate substantial service at renewal; a 700 MHz Commercial Services Band partitionee thus could not claim that the text of section 27.15(d)(1)(i) enables it to evade the end-of-term renewal showing simply because it is a partitionee. Such a substantial-service-at-renewal requirement, however, has yet to be adopted for the 1.4 GHz, 1.6 GHz, 2.3 GHz bands, and partitionees in these bands could argue that under section 27.15(d)(1)(i) they are not obligated to provide service to obtain license renewal.

85. In yet another variant of the partitioner-only construction option, the text of rules in some services is silent regarding a partitionee’s end-of-term obligations. Section 80.60(d)(1) of the Maritime Radio Services rules, for example, provides that where a partitioner certifies that it has met or will meet the construction requirement for the entire pre-partitioned geographic service area and fails, “only its renewal application would be subject to forfeiture at renewal.”²²³ Similarly, section 101.1323(c)(2) of the Multiple Address Systems rules provides that where the partitioner fails to meet the construction requirement “only its license would be subject to forfeiture at renewal.”²²⁴ As a result, a licensee in either service could partition off the most valuable portion of its geographic area to either an affiliate or a third party, and then undertake no construction in the retained portion of the licensed area. While the original licensee would lose its license, the affiliate or a third party would be able to keep, without undertaking any construction for an indefinite period, the area it received under the partitioning. In fact, some licensees have argued that they may obtain renewal of an unconstructed license, citing the nonperformance of the partitioner to sidestep requirements for renewal of their own license.

b. Disaggregation

86. Licensees currently have several options under the Commission’s disaggregation rules to meet applicable construction requirements.

87. *One-party Construction.* In most services, parties can assign the construction requirements to either the disaggregator or the disaggregatee, and construction by that entity is deemed sufficient for both

²²¹ See 47 C.F.R. §§ 22.513(f)(1)(ii) (Paging and Radiotelephone Service); 90.813(e)(1)(ii) (900 MHz SMR Service).

²²² 47 C.F.R. § 27.15(d)(1)(i).

²²³ 47 C.F.R. § 80.60(d)(1) (Maritime Radio Services) (where a partitioner certifies that it has met or will meet the substantial service requirement for the entire market, and “fails to meet the substantial service standard, however, only its renewal application would be subject to forfeiture at renewal”).

²²⁴ 47 C.F.R. § 101.1323(c)(2).

parties.²²⁵ Should the designated party fail to satisfy the construction requirements in a number of services where one-party construction is an available option, only that licensee will lose its license. Our 218-219 MHz Service rules, for example, provide that where “the party responsible for meeting the [disaggregation] construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.”²²⁶ Our Multiple Address Systems and 220-222 MHz Service rules are similarly phrased.²²⁷ A licensee in these services thus could disaggregate a sliver of spectrum to an affiliate, and assign to the affiliate the construction obligation; even if the affiliate failed to timely construct, the licensee could retain its license for the bulk of the spectrum in the geographic area, without pursuing timely construction. Moreover, in services where there is currently no specific requirement to provide actual service to obtain renewal, a licensee could hold spectrum licenses without providing service indefinitely.

88. *Shared Construction Responsibility.* Many services allow parties to a spectrum disaggregation to share responsibility for meeting the construction requirements. In some services, the shared-construction option requires each party to independently satisfy the construction requirements, and if either fails, both are subject to loss of their license at renewal. For example, the Commission has stated that where parties share responsibility for meeting AMTS construction requirements in the disaggregation context, “[i]f either party fails to meet the construction requirement, both licenses would be subject to forfeiture at renewal.”²²⁸ The Commission’s 220-222 MHz Service rules similarly provide that where “both parties accept responsibility for meeting the [disaggregation] construction requirements and later fail to do so, then both their licenses will cancel automatically without further Commission action.”²²⁹

89. By contrast, our Narrowband PCS shared-construction rules could be construed to only require parties to a disaggregation to meet construction requirements in the aggregate rather than individually.²³⁰ Thus, in the case of a disaggregated nationwide Narrowband PCS license, one party could use its spectrum to cover 40 percent of the U.S. population and the other could use its spectrum to cover an additional 35 percent of the U.S. population, and together they could satisfy the ten-year, 75 percent population construction option.²³¹ The Commission’s Paging and Radiotelephone Service rules similarly allow parties to meet the applicable-construction requirements in the aggregate on a shared basis rather than individually.²³²

90. More recently, in 2007, the Commission determined that because of the more rigorous performance requirements it was adopting for the 700 MHz Commercial Services Band licenses that then remained to be auctioned (Auction 73),²³³ the disaggregator, disaggregatee, or both working together can

²²⁵ See, e.g., 47 C.F.R. §§ 27.15(d)(2)(i) (most Part 27 services); 90.813(e)(2) (900 MHz SMR Service); 95.823(d)(2) (218-219 MHz Service).

²²⁶ 47 C.F.R. § 95.823(d)(2).

²²⁷ 47 C.F.R. §§ 101.1323(c)(1) (MAS rule); 90.1019(d)(2) (220 MHz Service).

²²⁸ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6708 n.232 (2002).

²²⁹ 47 C.F.R. § 90.1019(d)(2).

²³⁰ 47 C.F.R. § 24.104(g)(1)(ii), (g)(4).

²³¹ 47 C.F.R. § 24.103(a).

²³² 47 C.F.R. § 22.513(g)(1)(ii), (g)(4).

²³³ The authorizations included in the Commission’s 2007 order are those for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, and Blocks C, C1, and C2 in the 746-757 MHz and 776-787 MHz bands.

meet the four-year and end-of-term construction benchmarks for the entire geographic license area.²³⁴ The Commission observed that this approach would enable parties to disaggregation agreements to share the cost of meeting the construction requirement.²³⁵ It also stated that by placing the performance obligations “on both parties, we provide greater assurance that the disaggregation agreement will result in compliance with these requirements.”²³⁶ If either party meets the four-year buildout requirement, it is considered to be satisfied for both parties. If neither party meets the four-year requirement, then each license term will be reduced by two years.²³⁷ Similarly, if either party meets the end-of-term buildout requirement, it is considered to be satisfied for both. If neither party meets the end-of-term benchmark, both will be subject to an automatic “keep-what-you-use” rule, under which they will lose their authorization for unserved portions of their license areas.²³⁸

2. Proposed Requirements

91. In light of the Commission’s accumulated experience with implementation of partitioning and disaggregation in numerous services, we tentatively conclude that the public interest would be better served if we revise our rules to require each party to a partitioning, disaggregation, or combination of both to independently satisfy the service-specific construction obligations. Accordingly, we propose to adopt an independent construction requirement for each party to a geographic partitioning or spectrum disaggregation in those services that currently provide for partitioning or disaggregation. This approach would eliminate any provisions in our partitioning and disaggregation rules that enable parties to avoid timely construction. Our goal is to harmonize the Commission’s disparate partitioning and disaggregation rules to address these concerns while affording licensees significant flexibility to structure their coverage areas and spectrum use as envisioned when these rules were adopted.

92. Specifically, we tentatively conclude that the public interest will be served by requiring each party to a partitioning, disaggregation, or combination of both in any of the following services to individually meet the applicable service performance requirements (both construction and operation) for its license:

- 1.4 GHz Service,²³⁹
- 1.6 GHz Service,²⁴⁰
- 24 GHz Service,²⁴¹
- 39 GHz Service,²⁴²

²³⁴ 700 MHz Second Report and Order, 22 FCC Rcd at 15357 ¶ 187 (codified at 47 C.F.R. § 27.15(d)(2)(ii)).

²³⁵ *Id.* at 15358 ¶ 188.

²³⁶ *Id.*

²³⁷ *Id.* at 15357-58 ¶ 187.

²³⁸ *Id.* at 15358 ¶ 187.

²³⁹ See 47 C.F.R. Pt. 27, Subpt. I. See also 47 C.F.R. § 27.15(d)(1)(i) & (d)(2)(i) (1.4 GHz Service partitioning and disaggregation rules).

²⁴⁰ See 47 C.F.R. Pt. 27, Subpt. J. See also 47 C.F.R. § 27.15(d)(1)(i) & (d)(2)(i) (1.6 GHz Service partitioning and disaggregation rules).

²⁴¹ See 47 C.F.R. Pt. 101, Subpt. G. See also 47 C.F.R. § 101.535 (24 GHz Service partitioning and disaggregation rules).

- 218-219 MHz Service (formerly Interactive Video Data Service),²⁴³
- 220-222 MHz Service,²⁴⁴
- 700 MHz Commercial Services,²⁴⁵
- 700 MHz Guard Band Service,²⁴⁶
- 800 MHz Specialized Mobile Radio Service,²⁴⁷
- 900 MHz Specialized Mobile Radio Service,²⁴⁸
- Advanced Wireless Service (AWS-1, 1710-1755 and 2110-2155 MHz),²⁴⁹
- Air-Ground Radiotelephone Service,²⁵⁰
- Broadband Personal Communications Service,²⁵¹
- Broadband Radio Service (BRS) and Educational Broadband Service (EBS),²⁵²

(Continued from previous page) _____

²⁴² See 47 C.F.R. Pt. 101, Subpt. B. See also 47 C.F.R. § 101.56 (39 GHz Service partitioning and disaggregation rules).

²⁴³ See 47 C.F.R. Pt. 95, Subpt. F. See also 47 C.F.R. § 95.823 (218-219 MHz Service partitioning and disaggregation rules).

²⁴⁴ See 47 C.F.R. Pt. 90, Subpt. T. See also 47 C.F.R. § 90.1019(d) (220 MHz Service partitioning and disaggregation rules).

²⁴⁵ 700 MHz Commercial Service licensees are subject to different partitioning and disaggregation rules based on their spectrum block. See 47 C.F.R. §§ 27.15(d)(1)(ii), (d)(2)(ii) (partitioning and disaggregation rules for Block A 698-704, 728-734 MHz; Block B 704-710, 734-740 MHz; Block E 722-728 MHz; and Block C 746-757, 776-787 MHz), 27.15(d)(1)(i), (d)(2)(i) (partitioning and disaggregation rules for Block C 710-716, 740-746 MHz; and Block D 716-722 MHz).

²⁴⁶ See 47 C.F.R. Pt. 27, Subpt. G. See also 47 C.F.R. § 27.15(d)(1)(i), (d)(2)(i) (partitioning and disaggregation rules). The 700 MHz guard bands include Block A 757-758 MHz, 787-788 MHz, and Block B 775-776, 805-806 MHz.

²⁴⁷ See 47 C.F.R. Pt. 90, Subpt. V. See also 47 C.F.R. § 90.911(e) (800 MHz SMR Service partitioning and disaggregation rules).

²⁴⁸ See 47 C.F.R. Pt. 90, Subpt. U. See also 47 C.F.R. § 90.813(e) (900 MHz SMR Service partitioning and disaggregation rules).

²⁴⁹ 47 C.F.R. Pt. 27, Subpt. L.

²⁵⁰ See 47 C.F.R. Pt. 22, Subpt. G. Partitioning and disaggregation are permitted in the commercial Air-Ground Radiotelephone Service. See Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review--Amendment of Parts 1, 22, and 90 of the Commission's Rules, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4403, 4422 ¶ 32 (2005) (noting Air-Ground "licensees will also be permitted to engage in partitioning and/or disaggregation of their licenses"). Proposed rule section 1.950 (Appendix A) provides that Air-Ground Radiotelephone Service licensees may enter into partitioning and disaggregation arrangements.

²⁵¹ See 47 C.F.R. Pt. 24, Subpt. H. See also 47 C.F.R. § 24.714 (Broadband PCS partitioning and disaggregation rules).

²⁵² See 47 C.F.R. Pt. 27, Subpt. M. See also 47 C.F.R. § 27.15(d)(1)(i) & (d)(2)(i) (BRS/EBS partitioning and disaggregation rules). BRS/EBS spectrum includes 2305-2320 MHz and 2345-2360 MHz.

- Cellular Radiotelephone Service (Cellular Service),²⁵³
- Local Multipoint Distribution Service (LMDS),²⁵⁴
- Multichannel Video & Distribution and Data Service (MVDDS),²⁵⁵
- Multilateration Location and Monitoring Service (M-LMS),²⁵⁶
- Multiple Address Systems (MAS),²⁵⁷
- Narrowband Personal Communications Service;²⁵⁸
- Paging and Radiotelephone Service;²⁵⁹
- Public Coast Stations including Automated Marine Telecommunications Systems (AMTS),²⁶⁰
and
- Wireless Communications Service (WCS).²⁶¹

93. We propose to harmonize and consolidate all of the Commission's partitioning and disaggregation requirements in a new section 1.950 to the maximum extent practicable. This section will apply to the more than 20 wireless radio services in which geographic partitioning or spectrum disaggregation is now permitted. The proposed language of new section 1.950 is set forth in Appendix A. We seek detailed comment on the wording of proposed section 1.950 and all aspects of our proposal, including whether imposing a construction obligation on both parties to a partitioning or disaggregation could in some cases discourage publicly beneficial arrangements.

²⁵³ See 47 C.F.R. Pt. 22, Subpt. H. See also 47 C.F.R. § 22.948 (Cellular Service partitioning and disaggregation rules). While most services in which partitioning or disaggregation are permitted are licensed by geographic area, the Cellular Service is currently licensed by site. The Cellular Service rules do not provide a "substantial service" option for satisfying construction obligations. Rather, the rules provide specific time frames in which "[n]ew cellular systems must be at least partially constructed and begin providing cellular service to subscribers" 47 C.F.R. § 22.946(a); see also 47 C.F.R. 22.946(b) (explaining what is required to constitute the provision of service to subscribers). We also note that CTIA – The Wireless Association has filed a petition for rulemaking seeking the transition of the Cellular Service to a geographic-area licensing system. See CTIA – The Wireless Association Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing, RM No. 11510 (filed Oct. 8, 2008). The Commission has sought comment on CTIA's petition. See "Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Transition Part 22 Cellular Services to Geographic Market-Area Licensing," RM No. 11510, *Public Notice*, 24 FCC Rcd 27 (WTB 2009).

²⁵⁴ See 47 C.F.R. Pt. 101, Subpt. M. See also 47 C.F.R. § 101.1111 (LMDS partitioning and disaggregation rules).

²⁵⁵ See 47 C.F.R. Pt. 101, Subpt. P. See also 47 C.F.R. § 101.1415 (MVDDS partitioning rules).

²⁵⁶ See 47 C.F.R. Pt. 90, Subpt. M. See also 47 C.F.R. § 90.365 (M-LMS partitioning and disaggregation rules).

²⁵⁷ See 47 C.F.R. Pt. 101, Subpt. O. See also 47 C.F.R. § 101.1323 (MAS partitioning and disaggregation rules).

²⁵⁸ See 47 C.F.R. Pt. 24, Subpt. D. See also 47 C.F.R. § 24.104 (Narrowband PCS partitioning and disaggregation rules).

²⁵⁹ See 47 C.F.R. Pt. 22, Subpt. E. See also 47 C.F.R. § 22.513 (Paging and Radiotelephone Service partitioning and disaggregation rules).

²⁶⁰ See generally 47 C.F.R. Pt. 80. See also 47 C.F.R. § 80.60 (AMTS geographic area and VHF Public Coast partitioning and disaggregation rules).

²⁶¹ See 47 C.F.R. Pt. 27, Subpt. D. See also 47 C.F.R. § 27.15(d)(1)(i), (d)(2)(i) (WCS partitioning and disaggregation rules). WCS includes the 2305-2320 and 2345-2360 MHz bands.

94. We note that in the PCS disaggregation context, the Commission stated that “[b]ecause our rules do not dictate a minimum level of spectrum usage by the original PCS licensee, we believe it would be inconsistent to impose separate construction requirements on both disaggregator and disaggregatee for their respective spectrum portions.”²⁶² Does the fact that the Commission does not require minimum spectrum usage in many services militate against requiring both parties to a disaggregation to separately meet performance requirements? We request any commenters that take this position to support their arguments with as much detail as possible and to provide any appropriate supporting facts. We also note that despite the Commission’s foregoing statement, it explained that “[s]hould both parties agree to share the responsibility for meeting the construction requirements and either party later fail to do so, both parties’ licenses will be subject to forfeiture.”²⁶³

95. The Commission also observed in the *CMRS Partitioning and Disaggregation Order* that “[t]he goal of our construction requirements in both the partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place.”²⁶⁴ It is paramount that our construction requirements are not circumvented. Indeed, Section 309(j)(4)(B) of the Act requires that rules for auctionable services “include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.”²⁶⁵ We thus request comment regarding whether our proposal will eliminate the opportunities that exist under our current partitioning and disaggregation rules that may enable a party to avoid construction. We also seek comment on whether adoption of this proposal would lead to more efficient spectrum usage. Parties should support their positions with detailed comments and specific facts.

96. We also seek comment on whether the public interest would be served by making any exceptions to the uniform, bright-line construction rules we are proposing today for any service in which partitioning or disaggregation is permitted. For example, we note that 700 MHz spectrum licenses won in Auction 73 are subject to more stringent performance requirements than most Wireless Radio Services, including four-year and end-of-term construction benchmarks and “keep-what-you-use” policies.²⁶⁶ For these licenses,²⁶⁷ a disaggregator, disaggregatee, or both working together can meet the construction benchmarks for the entire license area.²⁶⁸ If neither party meets the four-year benchmark, then both parties’ license terms will be reduced by two years.²⁶⁹ Likewise, if neither party meets the end-of-term benchmark, both will be subject to an automatic “keep-what-you-use” rule, and will lose their authorization for unserved portions of their license areas.²⁷⁰ We seek comment on whether the Commission should continue to afford 700 MHz spectrum licenses won in Auction 73 such treatment, or

²⁶² *CMRS Partitioning and Disaggregation Order*, 11 FCC Rcd at 21865 ¶ 62.

²⁶³ *Id.* at ¶ 63.

²⁶⁴ *Id.* at 21864 ¶ 61.

²⁶⁵ 47 U.S.C. § 309(j)(4)(B).

²⁶⁶ *See 700 MHz Second Report and Order*, 22 FCC Rcd at 15356-58 ¶¶ 182-188.

²⁶⁷ The authorizations included in the Commission’s 2007 order are those for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, and Blocks C, C1, and C2 in the 746-757 MHz and 776-787 MHz bands.

²⁶⁸ *700 MHz Second Report and Order*, 22 FCC Rcd at 15357 ¶ 187 (codified at 47 C.F.R. § 27.15(d)(2)(ii)).

²⁶⁹ *Id.* at 15357-58 ¶ 187.

²⁷⁰ *Id.* at 15358 ¶ 187.

whether the public interest would be better served by requiring each party separately to meet applicable construction benchmarks.

97. Finally, while we tentatively conclude that our proposal discussed above would be the best way to balance competing factors and to support partitioning and disaggregation arrangements that further the public interest, we welcome any additional suggested rule or policy revisions that commenters might want to suggest. We invite comment on whether there are other mechanisms available to the Commission to deter circumvention of construction requirements under partitioning and disaggregation arrangements. We request that any alternative proposals be explained in detail. This explanation should include the goals of the proposal, and how adoption of the proposal would achieve such goals.

IV. ORDER

98. We hereby freeze the filing of new applications that are mutually exclusive with renewal applications, implement a hold on currently pending competing renewal applications, and specify the process to be followed for renewal applications filed during this rulemaking.

A. Freeze on the Filing of Competing Renewal Applications

99. In light of the fundamental rule changes that we have tentatively concluded to adopt today, we find that continuing to accept applications that are mutually exclusive with the renewal applications of incumbent Wireless Radio Services licensees would impair the objectives of this proceeding. Accordingly, we hereby suspend acceptance of applications for new Wireless Radio Services licenses that are mutually exclusive with the renewal applications of incumbent licensees for all Wireless Radio Services. This suspension applies to applications received on or after the adoption date of this Notice of Proposed Rulemaking and Order and applies until further notice.²⁷¹ Any competing renewal applications received on or after the adoption date will be dismissed as unacceptable for filing. We take this action to permit the orderly and effective resolution of the issues addressed in this proceeding.

B. Hold on Pending Competing Renewal Applications

100. The Commission currently has pending before it a total of 151 renewal applications (in three different services) and 178 applications that are competing with those applications.²⁷² To date, most of the competing applications have not been viewable through the Commission's Universal Licensing System (ULS). We are now making these applications publicly viewable via ULS. We will hold these already-filed competing applications in abeyance until the conclusion of this proceeding. If we decide to adopt the rules and policies proposed in the Notice of Proposed Rulemaking, we will dismiss all pending

²⁷¹ Our decision to impose this freeze is procedural and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(A), (B), (d). *See also Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629, 638 (D.C. Cir. 1984) (deeming interim processing rules, including a freeze on applications, as procedural) (*citing Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963)).

²⁷² There are 121 markets in which mutually exclusive (*i.e.*, renewal and competing) applications have been filed. Green Flag Wireless, LLC filed an application (FCC File No. 0003119924) that was mutually exclusive with an application for renewal of call sign KNLB209 filed by Pacific Triangle Communication Inc. (FCC File No. 0003097954). The Mobility Division subsequently dismissed the renewal application and terminated the authorization for call sign KNLB209. *See* Letter to Sheila Wang from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (dated Mar. 6, 2008), attached to FCC File No. 0003097954. Accordingly, we also dismiss at this time the application filed by Green Flag Wireless, LLC that was mutually exclusive with the Pacific Triangle application.

mutually exclusive applications and related correspondence filed with the Commission regarding those applications.²⁷³

101. It is also possible that we may not adopt the proposed rules and policies, in light of the record to be developed in this rulemaking, and instead retain the status quo or adopt a different renewal paradigm. In either case, we must preserve any available legal rights of the applicants that have already filed competing renewal applications, as well as the legal rights of any party that might be interested in filing a competing renewal application absent the subject freeze. We will determine at the conclusion of the proceeding, in accordance with any such rules we ultimately may adopt in this proceeding, whether to process (*i.e.*, accept for filing) or return those applications. In that event, we also will prescribe appropriate processes at the conclusion of this rulemaking for the filing of any competing renewal applications regarding renewal applications filed during this rulemaking.

102. We will hold in abeyance all pleadings and correspondence directed to the Commission regarding the pending comparative renewal applications described below.²⁷⁴ In addition, parties will not be permitted to file any additional pleadings or correspondence regarding those competing applications or the alleged comparative renewal situations. We direct the Wireless Telecommunications Bureau to dismiss as unacceptable for filing any additional pleadings filed regarding any of the currently pending renewal applications or mutually exclusive applications.

1. Broadband Personal Communications Service

103. NTCH-CA, Inc., a PCS D-Block licensee, filed a competing application²⁷⁵ against the renewal application²⁷⁶ of FB Communications, Inc., the incumbent F-Block licensee in the same market. NTCH-CA alleges that FB Communications has not productively used the spectrum during its initial license term, and has “warehoused” the spectrum in violation of the Commission’s rules. NTCH-CA claims that the license should be awarded to a party such as NTCH-CA itself, which will put the spectrum to its most highly-valued use.²⁷⁷

2. Cellular Radiotelephone Service

104. N.E. Colorado Cellular, Inc. (NECC) has filed a competing application²⁷⁸ against the renewal application of Sagir, Inc.²⁷⁹ In a related petition to deny Sagir’s renewal application, NECC

²⁷³ The filing of a mutually exclusive competing application does not in and of itself create in the applicant a vested right. *See, e.g., Hispanic Information & Telecommunications Network, Inc. v. FCC*, 865 F.2d 1289, 1294-95 (D.C.Cir. 1989) (filing an application does not create a vested right to a hearing; an application may be dismissed if an applicant is no longer qualified) (citation omitted); *Melcher v. FCC*, 134 F.3d 1143, 1164-65 (D.C.Cir. 1998) (filing an application for waiver does not create a legal interest restricting Commission discretion) (citations omitted); *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235, 240-41 (D.C. Cir. 1997) (mere filing of application does not vest rights in an applicant).

²⁷⁴ *See infra* paras. 107-111.

²⁷⁵ *See* FCC File No. 0003030420 (filed May 11, 2007).

²⁷⁶ *See* FCC File No. 0002949849 (filed Mar. 14, 2007). *See* Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, *Public Notice*, Rep. No. 3006 (rel. Mar. 21, 2007).

²⁷⁷ FCC File No. 0003030420, Attachment at 3.

²⁷⁸ FCC File No. 0000230425 (filed Sep. 29, 2000, amended Apr. 6, 2001). *See* Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Rep. No. 727 (rel. Dec. 20, 2000).

²⁷⁹ FCC File No. 0000212826 (filed Aug. 31, 2000). *See* Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Rep. No. 629 (rel. Sept. 6, 2000).

alleges that Sagir has not met its substantial service obligations,²⁸⁰ and that there are substantial questions of fact regarding Sagir's character and fitness to remain a Commission licensee due to alleged violations of our rules and the Act, including misrepresentation and fraud.²⁸¹ NECC also alleges that Sagir violated Section 310(d) of the Act because it "has undergone a complete transfer of control" without first obtaining Commission consent.²⁸² Sagir responds that NECC's allegations are simply an untimely attempt to re-open issues that the Commission has already decided.²⁸³

105. Tisdale Telephone Company, LLC (Tisdale) has filed a competing application²⁸⁴ against the renewal application of Kankakee Cellular L.L.C. (Kankakee).²⁸⁵ Tisdale asserts that the Kankakee license automatically terminated, as Kankakee discontinued operation for a longer period than is permitted by section 22.317.²⁸⁶ The *Kankakee Cellular Renewal Filing Group PN* notified Kankakee that its renewal expectancy showing, if any, was to be filed by August 10, 2009, and specified the dates for filing petitions to deny and replies.²⁸⁷ No renewal expectancy filing was made. Tisdale filed a petition to deny the Kankakee renewal application on September 4, 2009, reiterating its arguments that the Kankakee license had automatically terminated due to Kankakee's discontinuance of operation.²⁸⁸ In its reply, Kankakee states that it intends to withdraw its pending renewal application.²⁸⁹

3. Wireless Communications Service

106. Most of the competing applications have been filed in the 2.3 GHz WCS. As of today, the Commission has pending 175 applications that compete against the renewal applications of incumbent WCS licensees. The competing applications have been filed by four parties: Snapline Communications, LLC (Snapline);²⁹⁰ James E. McCotter (McCotter);²⁹¹ CWC License Holdings, Inc. (CWC);²⁹² and Green

²⁸⁰ N.E. Colorado Cellular, Inc. Petition to Deny (filed Mar. 21, 2001) at 8-25.

²⁸¹ *Id.* at 26-35.

²⁸² *Id.* at 34-35.

²⁸³ Sagir Opposition to Petition to Deny at 16.

²⁸⁴ FCC File No. 0003848206 (filed May 22, 2009, amended June 3, 2009). *See* Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Rep. No. 4976A (rel. May 27, 2009); Wireless Telecommunications Bureau Creates Renewal Filing Group for Cellular Renewal Application File No. 0003637485 (Call Sign KNKA668), *Public Notice*, DA 09-1313 (rel. June 11, 2009) (*Kankakee Cellular Renewal Filing Group PN*).

²⁸⁵ FCC File No. 0003637485 (filed Nov. 5, 2008). *See* Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Rep. No. 4888 (rel. Apr. 22, 2009); *Kankakee Cellular Renewal Filing Group PN*.

²⁸⁶ *See* FCC File No. 0003848206, Exhibit IX at 2-4, citing 47 C.F.R. § 22.317. If the Commission determines that the license has not automatically terminated, Tisdale claims that Kankakee is not entitled to a renewal expectancy and therefore must compete against Tisdale in a comparative hearing. *Id.*, Exhibit IX at 4. Tisdale elsewhere states that Kankakee must compete with it at auction. *Id.* at 1.

²⁸⁷ *Kankakee Cellular Renewal Filing Group PN*.

²⁸⁸ Tisdale Telephone Company Petition To Dismiss or Deny (filed Sept. 4, 2009).

²⁸⁹ Kankakee Cellular L.L.C. Reply to Petition to Dismiss or Deny (filed Sept. 21, 2009) at 2.

²⁹⁰ *See* FCC File Nos. 0003102647-56, 0003102932-41, 0003103184-93 (filed Jul. 5, 2007).

²⁹¹ *See* FCC File Nos. 0003090749 and 0003092274 (filed Jun. 26, 2007) and 0003113210, 0003113228, 0003113251, and 0003113292 (filed Jul. 13, 2007).

Flag Wireless, LLC (Green Flag).²⁹³ They have filed variously against the renewal applications of WCS Wireless License Subsidiary, LLC and NW Spectrum Co. (collectively, NextWave), Nextel Spectrum Acquisition Corp. (NSAC),²⁹⁴ Horizon Wi-Com, LLC, WaveTel NC License Corporation, NTELOS Inc., AWACS, Inc. and BellSouth Mobile Data, Inc. (collectively, AT&T), Stratos Offshore Services Company, and Comcast WCS, Inc.²⁹⁵

107. The Commission has received several rounds of filings regarding the pending WCS renewal and competing applications. NextWave has sought the “expeditious grant” of certain applications, noting that a Wireless Telecommunications Bureau (Bureau) *Waiver Order* granted incumbent WCS licensees until July 2010 to construct and make the required substantial service showing.²⁹⁶ NextWave notes that Snapline’s initial “competing applications” were returned and dismissed without prejudice for filing at the incorrect location, and that Snapline appears to have refiled those applications in July 2007.²⁹⁷ Snapline responds that its competing applications are superior to NextWave’s, noting that NextWave has failed to use the spectrum.²⁹⁸ It also claims that NextWave incorrectly concludes that the *Waiver Order* granted NextWave and certain other WCS licensees a renewal expectancy, arguing that only licensees that have actually used the spectrum have such an expectancy.²⁹⁹

(Continued from previous page)

²⁹² See FCC File Nos. 0003060925-27 (filed May 31, 2007), 0003090653-54 (filed Jun. 26, 2007), and 0003112496, 0003112570, and 0003112573 (filed Jul. 13, 2007).

²⁹³ See FCC File Nos. 0003065048-58, 0003065066-76, 0003065123-33, 0003066449-59 (filed Jun. 6, 2007), 0003090863-70 (filed Jun. 26, 2007), 0003113280-90, 0003113313-46, 0003113356, 0003113398-408, 0003113411, 0003113431, 0003113439, 0003113441, 0003113449, 0003113452, 00031134458, 0003113461, 0003113463, 0003113538-48, 0003113586, 0003113746, 0003113751, 0003113763, 0003113776, 0003113787-88, 0003113794, 0003113797, 0003113804, 0003113807 (filed Jul. 13, 2007), and 0003119919-28 (filed Jul. 20, 2007).

²⁹⁴ On October 24, 2008, the Mobility Division of the Wireless Telecommunications Bureau granted NSAC’s application to assign WCS licenses on a *pro forma* basis to Unrestricted Subsidiary Funding Company, another wholly-owned subsidiary of NSAC’s parent company, Sprint Nextel Corporation.²⁹⁴ See FCC File No. 0003437671; Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Donald J. Evans, Fletcher, Heald & Hildreth, and Robert H. McNamara, Sprint Nextel (Oct. 24, 2008).

²⁹⁵ As noted above, Green Flag Wireless, LLC had filed an application (FCC File No. 0003119924) that was mutually exclusive with an application for renewal of call sign KNLB209 filed by Pacific Triangle Communication Inc. (FCC File No. 0003097954), which has been subsequently dismissed. See *supra* note 272.

²⁹⁶ See Letter from Jennifer L. Richter, Counsel to NextWave Wireless, Inc., to Marlene Dortch, Secretary, Federal Communications Commission (filed Jul. 18, 2007) (NextWave July 18, 2007 Letter) at 2, citing Consolidated Request of the WCS Coalition For Limited Waiver of Construction Deadline for 132 WCS Licenses, *et al.*, WT Docket No. 06-102, *Order*, 21 FCC Rcd 14134 (WTB 2006) (*Waiver Order*). It further noted that no petitions to deny NextWave’s applications were timely filed, and that the “public interest” dictated that the Commission grant its renewal-only applications. NextWave July 18, 2007 Letter at 2.

²⁹⁷ As noted above, certain applications have not been viewable through ULS. Thus, NextWave indicates it is unclear as to the status of the refiled applications. NextWave July 18, 2007 Letter at 2-5. According to NextWave, the refiled applications should also be dismissed as having been filed outside the required time period, and not having been served on NextWave. *Id.*

²⁹⁸ See Letter from Stephen Roberts, President, Snapline Communications, LLC, to Marlene Dortch, Secretary, Federal Communications Commission (filed July 27, 2007) at 1-2.

²⁹⁹ At a minimum, Snapline requests a Commission hearing on the comparative worth of the competing applications. *Id.* at 2. Snapline also asserts that the applications it filed on May 31, 2007, and that were returned (continued....)

108. NextWave asserts that Snapline's interpretation of the *Waiver Order* is too narrow. It contends that the Bureau inherently contemplated a renewal expectancy (without the requisite substantial service showing) when noting it did not want incumbent WCS licensees to rush construction merely to fulfill a construction deadline.³⁰⁰ Further, it claims that a determination of substantial service in connection with a license renewal application can be made only after a licensee has made a substantial service showing that satisfies its performance obligations. According to NextWave, since the Bureau granted the licensees covered by the *Waiver Order* until July 2010 to make their substantial service construction showings, it would be illogical for the Bureau to determine that a renewal expectancy at this time is unwarranted.³⁰¹

109. AT&T has requested the "expeditious grant" of its AWACS and BellSouth Mobile Data renewal applications, arguing they were timely filed and comport with the conditions of the *Waiver Order*.³⁰² It claims that strict enforcement of the construction deadline³⁰³ would be contrary to the public interest under the *Waiver Order*, which waived that deadline as being in the public interest.³⁰⁴ It adds that it believes Green Flag and CWC also filed putatively competing applications with AT&T's renewal applications, and that Green Flag and CWC request consideration under the comparative procedures of section 27.14.³⁰⁵ AT&T notes that under section 27.321(b), a comparative hearing will occur only when the Commission determines that such a hearing is in the public interest. AT&T asserts that the Commission, through the Bureau, has already determined that the public interest dictates extension of the construction deadline as granted in the *Waiver Order*. AT&T concludes that this Bureau public interest determination "precludes the threshold determination . . . that comparative consideration will serve the public interest."³⁰⁶

110. Green Flag and CWC assert that AT&T misreads the *Waiver Order* to mean all WCS licensees are immunized from renewal challenges. They note that the *Waiver Order* did not conditionally renew WCS licenses and incumbent licensees thus have no reason to believe their renewal applications would be free from challenge.³⁰⁷ They further note that in its order granting AT&T's merger with BellSouth, the Commission, aware that AT&T had applied for and received a waiver of the buildout deadline for its WCS license, nevertheless stated that "WCS licensees are required to demonstrate

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and dismissed without prejudice by the Commission, were properly filed, *id.* at 2-3, a position it reiterates in its petition for reconsideration of those dismissals. See Snapline Communications, L.L.C., Petition for Reconsideration, File No. 0003001466 *et al.*, Letter from Stephen Roberts, President, Snapline Communications, LLC, to Marlene Dortch, Secretary, Federal Communications Commission (filed Aug. 2, 2007).

³⁰⁰ See Letter from Jennifer L. Richter to Marlene Dortch, Secretary, Federal Communications Commission (filed Aug. 8, 2007) at 2-3.

³⁰¹ *Id.* at 2-3.

³⁰² See Letter from James J.R. Talbot, Attorney for AT&T Services, Inc., to Marlene Dortch, Secretary, Federal Communications Commission (filed Sept. 18, 2007) at 1-2.

³⁰³ See 47 C.F.R. § 27.14(a).

³⁰⁴ Letter from James J.R. Talbot, Attorney for AT&T Services, Inc., to Marlene Dortch, Secretary, Federal Communications Commission (filed Sept. 18, 2007) at 1.

³⁰⁵ *Id.* at 2.

³⁰⁶ *Id.*

³⁰⁷ See Letter from Donald J. Evans to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sept. 21, 2007) (Evans Sept. 21, 2007 Letter) at 1-2.

substantial service at renewal³⁰⁸ Green Flag and CWC also assert that had AT&T provided some level of service, mediocre or otherwise, there might be a plausible argument for a renewal expectancy, but AT&T has provided no service, and therefore a renewal expectancy is unwarranted.³⁰⁹

111. AT&T responds that Green Flag and CWC misread the *Waiver Order*, arguing that a WCS licensee cannot satisfy the renewal requirements of section 27.14(b) before it has satisfied the performance requirements of section 27.14(a). Since the *Waiver Order* extended compliance with section 27.14(a) until July 2010, AT&T claims a licensee cannot comply with section 27.14(b) until then.³¹⁰ AT&T also observes that there was no license renewal grant, conditional or otherwise, in the *Waiver Order*, because no renewal applications had yet been filed. According to AT&T, for the Bureau, *sua sponte*, to grant renewal applications so far in advance of the actual deadline appeared to the Bureau to be premature.³¹¹ AT&T asserts that to deny its renewal applications based on a lack of substantial service would contradict the *Waiver Order* itself.³¹²

³⁰⁸ *Id.* at 2, citing AT&T, Inc. and BellSouth Corporation Application for Transfer of Control, WT Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5751 ¶ 182 (2007).

³⁰⁹ Evans Sept. 21, 2007 Letter at 5.

³¹⁰ See Letter from James J.R. Talbot to Marlene Dortch, Secretary, Federal Communications Commission (filed Sept. 28, 2007) (Talbot Sept. 28, 2007 Letter) at 1-2.

³¹¹ *Id.* at 3, citing *Waiver Order*, 21 FCC Rcd 14134, 14141-42 ¶ 15. The *Waiver Order* was released December 1, 2006, while the majority of WCS license renewals were not due until several months later.

³¹² Talbot Sept. 28, 2007 Letter at 6.

Several subsequent filings generally reiterate the positions taken in previous submissions. See, e.g., Letter from Jennifer L. Richter to Marlene Dortch, Secretary, Federal Communications Commission (filed Oct. 9, 2007) (providing a general supplement to previously-filed letters in support of the expeditious grant of NextWave's various renewal applications); Letter from Donald J. Evans to Marlene Dortch, Secretary, Federal Communications Commission (filed Oct. 12, 2007) (responding to NextWave's supplement, and requesting that a licensee other than NextWave be allowed to "put this spectrum to prompt use"); Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to Fred Campbell, Chief, Wireless Telecommunications Bureau (filed Oct. 18, 2007) (requesting the expeditious grant of all renewal applications filed by WCS Coalition members, based on *Waiver Order* construction extension); Letter from Donald J. Evans to Fred Campbell (filed Oct. 24, 2007) (asserting that the WCS Coalition submission was inappropriate, and requesting that all competing applications be accepted for filing in order to make the requisite comparative worth showings); Letter from Paul J. Sinderbrand to Fred Campbell (filed Nov. 2, 2007) (asserting "associational standing" in defense of filing on behalf of its members, and reiterating that the *Waiver Order* dictated grant of the renewal applications).

We also note that the competing applicants have claimed that one or more of the renewal applicants may have engaged in inappropriate *ex parte* contact with Commission staff. See Letter from Donald J. Evans to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sept. 18, 2007) (alleging that a September 5, 2007 meeting between NextWave and Commission staff represented inappropriate *ex parte* contact); Letter from Jennifer L. Richter to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sept. 24, 2007) (noting that at the September 5, 2007 meeting between NextWave and Commission staff, NextWave urged grant of its pending WCS renewal applications, but did not touch upon any putative competing applications, thus clearing it of an *ex parte* violation); Letter from Donald J. Evans to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Oct. 5, 2007) (requesting a meeting of all applicants to resolve the *ex parte* issue and discuss a timeline and procedures for a comparative renewal proceeding). See also Letter from Stephen Roberts to Marlene Dortch, Secretary, Federal Communications Commission (filed Oct. 29, 2007) (demanding a "full accounting" of all NextWave *ex parte* communications with Commission staff dealing with WCS license renewal applications and/or Snapline's competing applications, including at the September 5, 2007 meeting between NextWave and Commission staff); Letter from Jennifer L. Richter to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 16, 2007) (indicating that NextWave does not know the status of any putatively "pending" (continued....)

C. Interim Renewal Application Procedures

112. During the pendency of this rulemaking, we will require incumbent licensees whose licenses are due for renewal to comply with the applicable rules regarding the filing and content of such applications. Specifically, licensees must file timely renewal applications in accordance with current Commission rules. To the extent that such renewal applications are routinely placed on a Wireless Telecommunications Bureau regularly-scheduled accepted for filing public notice, we will continue that practice. Interested parties may file petitions to deny such applications consistent with our rules.³¹³

113. To maintain unimpeded operations in the affected services during this rulemaking, we direct the Wireless Telecommunications Bureau to grant currently pending applications for renewal, as well as applications for renewal filed during this rulemaking, on a conditional basis, subject to the outcome of this proceeding. We are concerned about the uncertainty that a long-standing “pending” renewal application can create within the Wireless Radio Services, and believe such conditional grants will mitigate some of that uncertainty. Accordingly, all renewal applications filed by incumbent licensees will be conditionally granted, subject to such rules as we may ultimately adopt in this proceeding. We recognize the importance of resolving this proceeding in a prompt manner. If a petition to deny is filed against a renewal application, we will act on that application only if we can resolve the issues raised in the petition to deny; if the petition to deny solely raises issues regarding the pendency of this rulemaking or a petitioner’s attempt to preserve an opportunity to file a competing application, such petition will not preclude a conditional license renewal grant.

V. PROCEDURAL MATTERS

A. Ex Parte Rules – Permit-But-Disclose

114. This rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³¹⁴ *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission’s rules.³¹⁵ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.³¹⁶ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b).³¹⁷

115. With respect to the pending renewal applications and related competing mutually exclusive applications, pursuant to section 1.1200(a),³¹⁸ we hereby modify their *ex parte* status from

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Snapline applications, and stating that at the September 5, 2007 meeting only NextWave’s renewal applications were discussed). The Commission’s Office of General Counsel concluded that “NextWave violated the *ex parte* rules, and we direct NextWave to take remedial measures.” Letter from Joel Kaufman, Associate General Counsel, Administrative Law Division, Office of General Counsel, Federal Communications Commission to Donald J. Evans, Jennifer L. Richter, and Stephen M. Roberts, at 2 (dated Dec. 12, 2007). The Office of General Counsel also noted that “no actual prejudice to Green Flag and Snapline has occurred, since these parties have had an opportunity to respond to NextWave’s presentation prior to any decision about the various applications.” *Id.* at 6.

³¹³ See 47 C.F.R. § 1.939.

³¹⁴ 47 C.F.R. §§ 1.1200 *et. seq.*

³¹⁵ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

³¹⁶ See 47 C.F.R. § 1.1206(b)(2).

³¹⁷ 47 C.F.R. § 1.1206(b).

³¹⁸ 47 C.F.R. § 1.1200(a).

“restricted”³¹⁹ to “permit-but-disclose.”³²⁰ Thus, *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission’s rules.³²¹ As with the rulemaking itself, persons making oral *ex parte* presentations regarding any of the subject applications are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.³²²

B. Comment Period and Procedures

116. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments should refer to WT Docket No. 10-112, and may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.³²³

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington D.C. 20554.

117. Parties should send a copy of their filings in this proceeding via email or U.S. mail to: Richard Arsenault, Chief Counsel, Mobility Division, Wireless Telecommunications Bureau, richard.arsenault@fcc.gov, and Michael Connelly, Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau, michael.connolly@fcc.gov, 445 12th Street, S.W., Washington, D.C. 20554. Parties should also provide one copy of their filings to the Commission’s copy contractor, Best Copy and

³¹⁹ See 47 C.F.R. § 1.1208.

³²⁰ A list of the pending applications covered by this change in the *ex parte* status is attached as Appendix C.

³²¹ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

³²² See 47 C.F.R. § 1.1206(b)(2).

³²³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Printing, Inc. (BCPI), Portals II, Room CY-B402, 445 12th Street, S.W., Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

118. Documents in WT Docket No. 10-112 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

119. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

C. Initial Regulatory Flexibility Analysis

120. As required by the Regulatory Flexibility Act of 1980 (RFA),³²⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed by the same dates as listed in paragraph 116, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Initial Paperwork Reduction Analysis

121. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

E. Further Information

122. For further information concerning this rulemaking proceeding, please contact Richard Arsenault, Chief Counsel, Mobility Division, Wireless Telecommunications Bureau, richard.arsenault@fcc.gov, (202) 418-0920, or Michael Connelly, Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau, michael.connely@fcc.gov, (202) 418-0132.

VI. ORDERING CLAUSES

123. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 301, 303, 308, 309, and 332 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 301, 303, 308, 309, 332, that this Notice of Proposed Rulemaking and Order are hereby ADOPTED.

124. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this Notice of Proposed Rulemaking, and that comment is sought on these proposals.

125. IT IS FURTHER ORDERED, pursuant to sections 4(i), 301, 303, 308, and 309 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 301, 303, 308, 309, that effective as of the date of the adoption of this Notice of Proposed Rule Making and Order, THE FEDERAL COMMUNICATIONS COMMISSION WILL NOT ACCEPT FOR FILING ANY NEW APPLICATIONS for Wireless Radio

³²⁴ 5 U.S.C. § 603.

Services licenses that are mutually exclusive with the renewal applications of incumbent licensees for all Wireless Radio Services. This suspension is effective until further notice, and applies to applications received on or after the date of adoption of this Notice of Proposed Rulemaking and Order.

126. IT IS FURTHER ORDERED, pursuant to sections 4(i), 301, 303, 308, and 309 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 301, 303, 308, 309, and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the Wireless Telecommunications Bureau SHALL GRANT currently pending applications for renewal, as well as applications for renewal filed during the pendency of the rulemaking, on a conditional basis, subject to the outcome of this proceeding and in accordance with the procedures specified above.

127. IT IS FURTHER ORDERED, pursuant to sections 4(i), 301, 303, 308, and 309 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 301, 303, 308, 309, and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the Wireless Telecommunications Bureau SHALL HOLD the already-filed competing applications, specified above and in Appendix C, in abeyance until the conclusion of this proceeding.

128. IT IS FURTHER ORDERED, pursuant to section 4(j) of the Communications Act of 1934, 47 U.S.C. § 154(j), and sections 1.1200(a) and 1.1208 note 2 of the Commission's rules, 47 C.F.R. §§ 1.1200(a) and 1.1208 note 2, that the *ex parte* status of the pending renewal applications and already-filed competing applications, specified above and in Appendix C, is modified from restricted to permit-but-disclose.

129. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), that the application of Green Flag Wireless, LLC, filed on July 20, 2007 (file no. 0003119924), is DISMISSED.

130. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

Parts 1, 22, 24, 27, 90 and 101 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 is revised to read as follows:

AUTHORITY: 15 U.S.C. 79 et seq.; 47 U.S.C. 151 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. Revise § 1.949 to read as follows:

§ 1.949 Application for renewal of authorization.

(a) *Filing Requirements.* Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization, and no sooner than 90 days prior to the expiration date. Renewal applications must be filed on the same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605.

(b) *Common Expiration Date.* Licensees with multiple authorizations in the same service may request a common date on which such authorizations expire for renewal purposes. License terms may be shortened by up to one year but will not be extended.

(c) *Renewal Showing.* An applicant for renewal of a geographic-area authorization in the following services regulated under this chapter must make a Renewal Showing, independent of its performance requirements, as a condition of renewal: 1.4 GHz Service (part 27, subpart I); 1.6 GHz Service (part 27, subpart J); 24 GHz Service (part 101, subpart G); 39 GHz Service (part 101, subpart B.); 218-219 MHz Service (part 95, subpart F); 220-222 MHz Service (part 90, subpart T); 700 MHz Commercial Services (part 27, subpart F); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Service (part 27, subpart L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service (part 90, subpart M); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); and Wireless Communications Service (part 27, subpart D). For the Broadband Radio Service and Educational Broadband Service, this requirement shall not apply to any license that expires on or before May 1, 2011. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(1) the level and quality of service provided by the applicant (*e.g.*, the population served, the area served, the number of subscribers, the services offered);

(2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

- (3) the extent to which service is provided to rural areas;
- (4) the extent to which service is provided to qualifying tribal land as defined in § 1.2110(e)(3)(i) of this chapter; and
- (5) any other factors associated with the level of service to the public.

(d) *Service Certification.* An applicant for renewal of a site-by-site authorization in the following services regulated under this chapter must make a Service Certification with its application: 220-222 MHz Service (site-based) (part 90, subpart T); 800/900 MHz (SMR and Business and Industrial Land Transportation Pool) (part 90, subpart S); Air-Ground Radiotelephone Service (General Aviation) (part 22, subpart G); Broadcast Auxiliary Service (part 74, subpart F); Common Carrier Fixed Point-to-Point, Microwave Service (part 101, subpart I); Digital Electronic Message Service (part 101, subpart G); Industrial/Business Radio Pool (part 90, subpart C); Local Television Transmission Service (part 101, subpart J); Multiple Address Systems (site-based), excluding systems licensed to public safety entities (part 101, subpart O); Non-Multilateration Location and Monitoring Service (part 90, subpart M); Offshore Radiotelephone Service (part 22, subpart I); Paging and Radiotelephone Service (site-based) (part 22, subpart E); Private Carrier Paging (part 90, subpart P); Private Operational Fixed Point-to-Point Microwave Service, excluding licenses held by public safety entities (part 101, subpart H); and Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service) (part 22, subpart F). The Service Certification must certify that the applicant is continuing to operate consistent with its most recently filed construction notification (NT) or most recent authorization, when no NT is required to be filed under the Commission's rules.

(e) *Regulatory Compliance Demonstration.* An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraphs (c) and (d) of this section must make a Regulatory Compliance Demonstration as a condition of renewal. A Regulatory Compliance Demonstration must include:

(1) A copy of each FCC order and letter ruling, which may or may not have been assigned a delegated authority number, finding a violation of the Communications Act or any FCC rule or policy by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not such an order or letter ruling relates specifically to the license for which renewal is sought);

and

(2) A list of any pending petitions to deny any application filed by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not the petition to deny relates specifically to the license for which renewal is sought).

(f) *Regulatory Compliance Certification.* An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraphs (c) and (d) of this section may, instead of making a Regulatory Compliance Demonstration as part of the renewal application, make a Regulatory Compliance Certification certifying the absence of any findings under paragraph (e)(1) of this section, and any pending petitions to deny under paragraph (e)(2) of this section

(g) For the purposes of paragraphs (e)(1) and (e)(2) of this section, the term affiliate means affiliate as defined in § 1.2110(c)(5) of this chapter.

(h) If the Commission, or the Wireless Telecommunications Bureau acting under delegated authority, finds that a licensee's Renewal Showing under paragraph (c) of this section, its Service Certification under paragraph (d) of this section, its Regulatory Compliance Demonstration under paragraph (e) of this section, or its Regulatory Compliance Certification under paragraph (f) of this section is insufficient, its renewal application will be denied, and its licensed spectrum will return automatically to the Commission for reassignment (by auction or other mechanism). In the case of certain services licensed site-by-site, the spectrum will revert automatically to the holder of the related overlay geographic-area license.

3. Add new § 1.950 to read as follows:

§ 1.950 Geographic Partitioning and Spectrum Disaggregation.

(a) *Definitions.* The terms “County and County Equivalent,” “Geographic Partitioning,” and “Spectrum Disaggregation” as used in this section are defined as follows:

(1) *County and County Equivalent.* The terms county and county equivalent as used in this part are defined by Federal Information Processing Standards (FIPS) 6-4, which provides the names and codes that represent the counties and other entities treated as equivalent legal and/or statistical subdivisions of the 50 States, the District of Columbia, and the possessions and freely associated areas of the United States. Counties are considered to be the “first-order subdivisions” of each State and statistically equivalent entity, regardless of their local designations (county, parish, borough, *etc.*). Thus, the following entities are considered to be equivalent to counties for legal and/or statistical purposes: The parishes of Louisiana; the boroughs and census areas of Alaska; the District of Columbia; the independent cities of Maryland, Missouri, Nevada, and Virginia; that part of Yellowstone National Park in Montana; and various entities in the possessions and associated areas. The FIPS codes and FIPS code documentation are available online at <http://www.itl.nist.gov/fipspubs/index.htm>.

(2) *Geographic Partitioning.* Geographic partitioning is the assignment of a geographic portion of a licensee's license area.

(3) *Spectrum Disaggregation.* Spectrum disaggregation is the assignment of portions or blocks of a licensee's spectrum.

(b) *Eligibility.* Licensees in the following wireless radio services regulated under this chapter are eligible for Geographic Partitioning and Spectrum Disaggregation: 1.4 GHz Service (part 27, subpart I); 1.6 GHz Service (part 27, subpart J); 24 GHz Service (part 101, subpart G); 39 GHz Service (part 101, subpart B.); 218-219 MHz Service (part 95, subpart F); 220-222 MHz Service (part 90, subpart T); 700 MHz Commercial Services (part 27, subpart F); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Services (part 27, subpart L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Broadband Radio Service and Educational Broadband Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M.); Multiple Address Systems (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); and Wireless Communications Service (part 27, subpart D).

(1) **Geographic Partitioning.** An eligible licensee may partition any geographic portion of its license area, at any time following grant of its license, subject to the following exceptions:

- (i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.
- (ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(2) **Spectrum Disaggregation.** An eligible licensee may disaggregate spectrum in any amount, at any time following grant of its license, subject to the following exceptions:

- (i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.
- (ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.
- (iii) VHF Public Coast (156-162 MHz) spectrum may only be disaggregated in frequency pairs, except that the ship and coast transmit frequencies comprising Channel 87 (see § 80.371(c) of this chapter) may be disaggregated separately.
- (iv) Disaggregation is not permitted in the Multichannel Video & Distribution and Data Service 12.2-12.7 GHz band.

(c) *Filing Requirements.* Parties seeking approval for geographic partitioning, spectrum disaggregation, or a combination of both must apply for a partial assignment of authorization by filing FCC Form 603 pursuant to § 1.948 of this chapter. Each request for geographic partitioning must include an attachment defining the perimeter of the partitioned area by geographic coordinates to the nearest second of latitude and longitude, based upon the 1983 North American Datum (NAD83). Alternatively, applicants may specify an FCC-recognized service area (e.g., Basic Trading Area, Economic Area, Major Trading Area, Metropolitan Service Area, or Rural Service Area), county, or county equivalent, in which case, applicants need only list the specific FCC-recognized service area, county, or county equivalent names comprising the partitioned area.

(d) *Relocation of Incumbent Licensees.* Applicants for geographic partitioning, spectrum disaggregation, or a combination of both must, if applicable, include a certification with their partial assignment of authorization application stating which party will meet any incumbent relocation requirements.

(e) *License Term.* The license term for a partitioned license area or disaggregated spectrum license is the remainder of the original licensee's license term.

(f) *Frequency Coordination.* Any existing frequency coordination agreements convey with the partial assignment of authorization for geographic partitioning, spectrum disaggregation, or a combination of both.

(g) *Performance Requirements.* Each party to a geographic partitioning, spectrum disaggregation, or a combination of both must individually meet any service-specific performance requirements (i.e., construction and operation requirements). If a licensee fails to meet any service-specific performance requirements on or before the required date, its authorization will terminate automatically on that date without further Commission action pursuant to § 1.946 of this chapter.

(h) *Unjust Enrichment.* Licensees making installment payments or that received a bidding credit, that partition their licenses or disaggregate their spectrum to entities that do not meet the eligibility standards for installment payments or bidding credits, are subject to the unjust enrichment requirements

of § 1.2111 of this chapter.

4. Add new § 1.953 to read as follows:

§ 1.953 Discontinuance of Service.

(a) *Termination of Authorization.* A licensee's authorization will automatically terminate, without specific Commission action, if it permanently discontinues service.

(b) *180-day Rule.* Permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. This 180-day rule applies to: all radio services regulated under parts 22, 24, 27 (except the Broadband Radio Service and Educational Broadband Service), and 80 of this chapter; trunked Specialized Mobile Radio Service (part 90, subpart S of this chapter); the 218-219 MHz Service (part 95, subpart S of this chapter), and the 220-222 MHz Service (part 90, subpart T of this chapter).

(c) *365-day Rule.* Permanent discontinuance of service is defined as 365 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. This 365-day rule applies to all radio services regulated under part 90 of this chapter, except trunked Specialized Mobile Radio Service (part 90, subpart S of this chapter) and the 220-222 MHz Service (part 90, subpart T of this chapter), and to all radio services regulated under part 101 of this chapter.

(d) *Channel Keepers.* Operation of channel keepers (devices that transmit test signals, tones, color bars, or some combination of these, for example) does not constitute operation for the purposes of this section.

(e) *Filing Requirements.* A licensee that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

(f) *Extension Request.* A licensee may file a request for a longer discontinuance period for good cause. An extension request must be filed at least 30 days before the end of the applicable 180-day or 365-day- discontinuance period. The filing of an extension request will automatically extend the discontinuance period a minimum of the latter of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request.

PART 22—PUBLIC MOBILE SERVICES

5. The authority citation for Part 22 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 222, 303, 309 and 332.

6. Remove Section 22.935.

7. Remove Section 22.936.

8. Remove Section 22.939.

9. Remove Section 22.940.

10. Remove Section 22.943.

PART 24—PERSONAL COMMUNICATIONS SERVICES

11. The authority citation for Part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

12. Remove Section 24.16.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

13. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336 and 337 unless otherwise noted.

14. Section 27.14 is amended to revise the title and by removing and reserving paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 27.14 Construction requirements.

* * * * *

(b) [Removed and Reserved].

(c) [Removed and Reserved].

(d) [Removed and Reserved].

(e) [Removed and Reserved].

(f) [Removed and Reserved].

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

15. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections. 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

16. Section 90.165 is amended as follows:

a. Remove paragraphs (b)(1), (c)(3)(i), and (c)(4)(i).

b. Redesignate paragraphs (b)(2) through (b)(4) as paragraphs (b)(1) through (b)(3).

c. Redesignate paragraphs (c)(3)(ii) through (c)(3)(iii) as paragraphs (c)(3)(i) through (c)(3)(ii).

- d. Redesignate paragraphs (c)(4)(ii) through (c)(4)(iv) as paragraphs (c)(4)(i) through (c)(4)(iii).
- e. Revise paragraph (c)(3)(ii).

§ 90.165 Procedures for mutually exclusive applications.

* * * * *

(c) * * *

(3) * * *

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification, a same-day filing group is used.

* * * *

17. Section 90.743 is removed.

PART 101—FIXED MICROWAVE SERVICES

18. The authority citation for Part 101 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

19. Section 101.1327 is removed.

20. Section 101.1413 is amended by revising the title and removing paragraphs (b) and (c) to read as follows:

§ 101.1413 License term.

The MVDDS license term is ten years, beginning on the date of the initial authorization grant.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking and Order (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided in paragraph 116 of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, the Commission takes three actions. First, the *Notice* proposes to adopt uniform renewal policies for licenses in Wireless Radio Services (WRS), based on the Commission's renewal framework for the 700 MHz Commercial Services Band.⁴ Specifically, the *Notice* tentatively concludes to apply the Commission's 700 MHz Commercial Services Band framework to services licensed by geographic area and, with certain refinements, to services licensed on a site-by-site basis. Second, the *Notice* proposes to harmonize the Commission's rules regarding the permanent discontinuance of operations by WRS licensees. Third, the *Notice* proposes to standardize the Commission's requirements regarding the responsibilities of parties to geographic partitioning and spectrum disaggregation arrangements.

3. The *Notice* proposes to harmonize the Commission's widely varying wireless license renewal requirements. Specifically, based on the Commission's 700 MHz renewal paradigm, applicants for geographic-area licenses would have to file a renewal showing that demonstrates the level of service they are providing to the public, and that they are compliant with the Commission's rules and policies and the Communications Act. For site-based services, renewal applicants would have to certify that they are operating consistent with their construction notification (NT) or most recent authorization, when no NT is required. The filing of applications that are mutually exclusive with a renewal application would be prohibited. If a renewal is denied, the spectrum in most cases would be returned to the Commission for reassignment, generally through competitive bidding.

4. The Commission's permanent discontinuance of operations rules are intended to provide licensees operational flexibility, while preventing spectrum warehousing. The definition of permanent discontinuance, however, varies by service, and some services contain no definition, enabling warehousing. The *Notice* seeks comment on whether to adopt a uniform definition for discontinuance of operations (such as 180 days) for all wireless services that would trigger automatic license termination.

5. The Commission's experience with partitioning and disaggregation across myriad wireless services indicates that parties can, and sometimes do, manipulate requirements in ways that result in spectrum lying fallow. The wording of these rules varies, and the responsibilities of parties are inconsistent. The *Notice* seeks to place licensees in different services on comparable regulatory footing

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-72, 22 FCC Rcd 8064, 8092-8094 ¶¶ 73-77 (2007) (*700 MHz First Report and Order*).

and close regulatory loopholes. The *Notice* tentatively concludes that each party to a partitioning or disaggregation should independently satisfy construction obligations.

B. Legal Basis

6. The proposed action is taken under sections 1, 2, 4(i), 301, 303, 308, 309, and 332 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 301, 303, 308, 309, 332.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

8. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.⁹

9. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.¹⁰

10. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹¹ As of 2002, there were approximately 87,525 governmental jurisdictions in the United States.¹² This number includes 38,967 county governments, municipalities, and townships, of which 37,373 (approximately 95.9 percent) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 85,931 or fewer. In completing this IRFA, we recognize that small governmental jurisdictions may be WRS licensees.

11. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.¹³ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless

⁵ 5 U.S.C. § 603(b)(3).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁸ Small Business Act, 15 U.S.C. § 632 (1996).

⁹ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (accessed Jan. 2009).

¹⁰ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹¹ 5 U.S.C. § 601(5).

¹² U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, pages 272-273, Tables 415 and 417.

¹³ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite);” <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

Telecommunications.”¹⁴ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.¹⁵ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.¹⁶ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.¹⁷ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.¹⁸ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.¹⁹ Thus, we estimate that the majority of wireless firms are small.

12. The Commission has determined that there are approximately 197,812 licensees in the Wireless Radio Services²⁰ affected by this *Notice*, as of May 18, 2010; the Commission does not know how many licensees in these bands are small entities, as the Commission does not collect that information for these types of entities. The Commission notes that, under the action it proposes in this *Notice*, entities, including small businesses, will have to comply with a single set of rules regarding license renewal in the WRS. The Commission does not know how many entities that will file for WRS license renewal will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small business definitions for these bands.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. In paragraphs 26-32 and 37-39 of the *Notice*, the Commission sets forth the rules with which geographic-area licensees in the Wireless Radio Services must comply; the rules for site-based licensees are specified in paragraphs 33-35 and 37-39. These rules would be generally applicable to all WRS licensees, large and small. For an incumbent geographic area WRS licensee to expect to renew its license, it must generally follow the three-part approach the Commission established for the 700 MHz Commercial Services Band, *i.e.*, (1) renewal applicants must demonstrate that they are providing substantial service to the public (or, when allowed under the relevant service rules, for private, internal communication), and substantially complying with the Commission’s rules (including any applicable performance requirements) and policies and the Communications Act, (2) competing renewal applications are prohibited, and (3) if a license is not renewed, the associated spectrum is returned to the Commission

¹⁴ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging,” <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications,” <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁵ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

¹⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

¹⁷ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

¹⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

¹⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²⁰ This number includes licensees in the geographic-based services listed in paragraph 20 of the *Notice*, *supra*, and the site-based services listed in paragraph 34 *supra*. Please note that a licensee in one service may also be a licensee in another service, thus the number of discrete licensees in affected services may actually be smaller.

for reassignment.²¹ Regarding the substantial service component of the first prong, the Commission has indicated that substantial service in the renewal context encompasses Commission consideration of a variety of factors including the level and quality of service, whether service was ever interrupted or discontinued, whether service has been provided to rural areas, and any other factors associated with a licensee's level of service to the public.²²

14. In paragraph 27, the Commission lists factors that WRS licensees in various services are required to address to demonstrate that the applicant should receive a renewal expectancy. The list includes the following factors: a description of the licensee's current service in terms of geographic coverage and population served; an explanation of the licensee's record of expansion, including a time table for the construction of new sites to meet changes in demand for service; a description of its investments in its system; a list, including addresses, of all cell transmitter stations constructed; identification of the type of facilities constructed and their operational status; consideration of whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers; consideration of whether the licensee's operations service niche markets or focus on serving populations outside of areas served by other licensees; and consideration of whether the licensee's operations serve populations with limited access to telecommunications services.

15. In paragraphs 37-39, applicable to both geographically and site-based services, the Commission indicates that in addition to making the requisite substantial service showing, a WRS licensee seeking renewal of its license must further indicate that it has substantially complied with all applicable Commission rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements; the Commission believes such a showing will assist in character and other evaluations of the applicant. Included in this showing are the filing, if any, of all FCC orders, including letter rulings, finding a violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee (whether or not such an order relates specifically to the license for which renewal is sought). The Commission also proposes that a renewal applicant must provide a list of any pending FCC proceedings or investigations that relate to a potential violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee. In the event there is no FCC order finding violations, the applicant will so certify.

16. Regarding requirements unique to site-based WRS licensees, in paragraphs 33-35, the Commission proposes to modify FCC Form 601 to require such renewal applicants to certify that they continue to operate consistent with the applicable filed construction notification(s) or most recent authorization(s) (when no notification was required to be filed under the Commission's rules); the licensee can expect license renewal if it files such certification and demonstrates substantial compliance with other applicable rules.

17. Harmonization of the rules in the affected wireless services will not impose any more administrative burden on a licensee than the licensee must currently comply with. The Commission believes its proposed action will have the effect of lessening the recordkeeping burden by making the renewal process more straight-forward; this is particularly so for an FCC licensee with authorizations in more than one of the affected services.

²¹ 700 MHz First Report and Order, 22 FCC Rcd at 8093-8094 ¶¶ 75-77.

²² See 700 MHz First Report and Order, 22 FCC Rcd at 8093 ¶ 75 (footnotes omitted).

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.²³

19. The Commission believes that the adoption of uniform renewal policies for licensees in the various Wireless Radio Service and harmonization of its rules regarding the permanent discontinuance of operations by WRS licensees will benefit all WRS applicants and licensees, regardless of size. The Commission believes that complying with the current license renewal rules, varied as they are, has the potential to place a particular burden on the limited financial resources of small businesses. The Commission therefore believes that uniform renewal rules throughout the Wireless Radio Services, and harmonizing its rules regarding the definition of, and what constitutes, permanent discontinuance of operation, will have the intended consequences of assisting small entities that are WRS licensees.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

20. None.

²³ 5 U.S.C. § 603(c).

APPENDIX C

**List of Pending Renewal Applications and Competing Mutually Exclusive Applications
Subject to Revised *Ex Parte* Treatment**

Market	Block	Purpose	File Number	Call Sign	Licensee Applicant Name
Cellular					
Nebraska 1 – Sioux					
CMA533	A	Licensee renewal application	0000212826	KNKN383	SAGIR, INC.
		Competing application	0000230425		N.E. Colorado Cellular Inc.
Kankakee, IL					
CMA273	A	Licensee renewal application	0003637485	KNKA668	Kankakee Cellular L.L.C.
		Competing application	0003848206		Tisdale Telephone Company, LLC
PCS					
Yuma, AZ					
BTA486	F	Licensee renewal application	0002949849	KNLG755	FB Communications, Inc.
		Competing application	0003030420		NTCH-CA INC
WCS					
Boston					
MEA001	A	Licensee renewal application	0003045896	KNLB210	Horizon Wi-Com LLC
		Competing application	0003090868		GREEN FLAG WIRELESS, LLC
MEA001	B	Licensee renewal application	0003001466	KNLB200	NW Spectrum Co.
		Competing application	0003065072		GREEN FLAG WIRELESS LLC
		Competing application	0003102647		SNAPLINE COMMUNICATIONS LLC
New York City					
MEA002	A	Licensee renewal application	0003045897	KNLB312	Horizon Wi-Com LLC
		Competing application	0003090869		GREEN FLAG WIRELESS, LLC
MEA002	B	Licensee renewal application	0003106756	KNLB204	Comcast WCS ME02, Inc.
		Competing application	0003119919		GREEN FLAG WIRELESS, LLC
Buffalo					
MEA003	A	Licensee renewal application	0003023908	KNLB313	Horizon Wi-Com LLC
		Competing application	0003090864		GREEN FLAG WIRELESS, LLC
MEA003	B	Licensee renewal application	0003001460	KNLB208	WCS Wireless License Subsidiary, LLC
		Competing application	0003065076		GREEN FLAG WIRELESS LLC
		Competing application	0003103189		SNAPLINE COMMUNICATIONS, LLC

Philadelphia

MEA004	A	Licensee renewal application	0003023906	KNLB314	Horizon Wi-Com LLC
		Competing application	0003090865		GREEN FLAG WIRELESS, LLC
MEA004	B	Licensee renewal application	0003106770	KNLB275	Comcast WCS ME04, Inc.
		Competing application	0003119920		GREEN FLAG WIRELESS, LLC

Washington

MEA005	A	Licensee renewal application	0003045895	KNLB315	Horizon Wi-Com LLC
		Competing application	0003090870		GREEN FLAG WIRELESS, LLC
MEA005	B	Licensee renewal application	0003107366	KNLB276	Comcast WCS ME05, Inc.
		Competing application	0003119921		GREEN FLAG WIRELESS, LLC

Richmond

MEA006	A	Licensee renewal application	0003067951	KNLB316	Horizon Wi-Com LLC
		Competing application	0003113251		MCCOTTER, JAMES E
MEA006	B	Licensee renewal application	0003063574	KNLB202	BellSouth Mobile Data, Inc.
		Competing application	0003113292		MCCOTTER, JAMES E

Charlotte-Greensboro-Greenville

MEA007	A	Licensee renewal application	0003063573	KNLB201	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003033032	WPZA813	WaveTel NC License Corporation
		Licensee renewal application	0003005914	WPSL357	Nextel Spectrum Acquisition Corp.
		Competing application	0003113210		MCCOTTER, JAMES E
		Competing application	0003090749		MCCOTTER, JAMES E
		Competing application	0003060781		MC COTTER, JAMES E
MEA007	B	Licensee renewal application	0003005907	WPSL350	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003033030	WPZA811	WaveTel NC License Corporation
		Licensee renewal application	0003063575	KNLB221	BellSouth Mobile Data, Inc.
		Competing application	0003060782		MC COTTER, JAMES E
		Competing application	0003113228		MCCOTTER, JAMES E
		Competing application	0003092274		MCCOTTER, JAMES E

Atlanta

MEA008	A	Licensee renewal application	0003005915	WPSL358	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003063603	KNLB222	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003033029	WPZA810	WaveTel NC License Corporation
		Competing application	0003112570		CWC LICENSE HOLDING INC
		Competing application	0003090654		CWC LICENSE HOLDING INC
		Competing application	0003060925		CWC LICENSE HOLDING INC
MEA008	B	Licensee renewal application	0003063576	KNLB223	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003005908	WPSL351	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003033031	WPZA812	WaveTel NC License Corporation
		Competing application	0003112573		CWC LICENSE HOLDING INC
		Competing application	0003090653		CWC LICENSE HOLDING INC
		Competing application	0003060926		CWC LICENSE HOLDING INC

Jacksonville

MEA009	A	Licensee renewal application	0003001468	KNLB213	NW Spectrum Co.
		Competing application	0003102649		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065071		GREEN FLAG WIRELESS LLC
MEA009	B	Licensee renewal application	0003063596	KNLB224	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003005909	WPSL352	Nextel Spectrum Acquisition Corp.
		Competing application	0003065069		GREEN FLAG WIRELESS LLC
		Competing application	0003113280		GREEN FLAG WIRELESS, LLC

Tampa-St. Petersburg-Orlando

MEA010	A	Licensee renewal application	0003005916	WPSL359	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003063577	KNLB225	BellSouth Mobile Data, Inc.
		Competing application	0003065070		GREEN FLAG WIRELESS LLC
		Competing application	0003113281		GREEN FLAG WIRELESS, LLC
MEA010	B	Licensee renewal application	0003005910	WPSL353	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003063607	KNLB226	BellSouth Mobile Data, Inc.
		Competing application	0003113282		GREEN FLAG WIRELESS, LLC
		Competing application	0003065068		GREEN FLAG WIRELESS LLC

Miami

MEA011	A	Licensee renewal application	0003063578	KNLB227	BellSouth Mobile Data, Inc.
		Competing application	0003113283		GREEN FLAG WIRELESS LLC
MEA011	B	Licensee renewal application	0003063579	KNLB228	BellSouth Mobile Data, Inc.
		Competing application	0003113284		GREEN FLAG WIRELESS LLC

Pittsburgh

MEA012	A	Licensee renewal application	0003023903	KNLB317	Horizon Wi-Com LLC
		Competing application	0003090866		GREEN FLAG WIRELESS, LLC
MEA012	B	Licensee renewal application	0003063591	KNLB277	BellSouth Mobile Data, Inc.
		Competing application	0003113285		GREEN FLAG WIRELESS, LLC

Cincinnati-Dayton

MEA013	A	Licensee renewal application	0003023899	KNLB318	Horizon Wi-Com LLC
		Competing application	0003090863		GREEN FLAG WIRELESS, LLC
MEA013	B	Licensee renewal application	0003062676	KNLB203	AWACS, Inc.
		Competing application	0003113286		GREEN FLAG WIRELESS LLC

Columbus

MEA014	A	Licensee renewal application	0003038018	KNLB243	NTELOS Inc.
		Competing application	0003090867		GREEN FLAG WIRELESS, LLC
MEA014	B	Licensee renewal application	0003062651	KNLB244	AWACS, Inc.
		Competing application	0003113287		GREEN FLAG WIRELESS, LLC

Cleveland

MEA015	A	Licensee renewal application	0003001452	KNLB302	WCS Wireless License Subsidiary, LLC
		Competing application	0003102936		SNAPLINE COMMUNICATIONS LLC
		Competing application	0003065066		GREEN FLAG WIRELESS LLC
MEA015	B	Licensee renewal application	0003001453	KNLB303	WCS Wireless License Subsidiary, LLC
		Competing application	0003065067		GREEN FLAG WIRELESS LLC
		Competing application	0003102935		SNAPLINE COMMUNICATIONS, LLC

Detroit

MEA016	A	Licensee renewal application	0003001454	KNLB304	WCS Wireless License Subsidiary, LLC
		Competing application	0003102937		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003066456		GREEN FLAG WIRELESS, LLC

Milwaukee

MEA017	A	Licensee renewal application	0003001470	KNLB217	NW Spectrum Co.
		Competing application	0003102651		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003066457		GREEN FLAG WIRELESS, LLC
MEA017	B	Licensee renewal application	0003001467	KNLB206	NW Spectrum Co.
		Competing application	0003066458		GREEN FLAG WIRELESS, LLC
		Competing application	0003102648		SNAPLINE COMMUNICATIONS LLC

Chicago

MEA018	A	Licensee renewal application	0003001455	KNLB305	WCS Wireless License Subsidiary, LLC
		Competing application	0003066459		GREEN FLAG WIRELESS, LLC
		Competing application	0003102938		SNAPLINE COMMUNICATIONS, LLC
MEA018	B	Licensee renewal application	0003062667	KNLB279	AWACS, Inc.
		Competing application	0003113288		GREEN FLAG WIRELESS, LLC

Minneapolis-St. Paul

MEA020	A	Licensee renewal application	0003001471	KNLB218	NW Spectrum Co.
		Competing application	0003102652		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065123		GREEN FLAG WIRELESS LLC
MEA020	B	Licensee renewal application	0003001475	KNLB292	NW Spectrum Co.
		Competing application	0003065124		GREEN FLAG WIRELESS LLC
		Competing application	0003102656		SNAPLINE COMMUNICATIONS, LLC

Des Moines-Quad Cities

MEA021	A	Licensee renewal application	0003062652	KNLB245	AWACS, Inc.
		Competing application	0003113289		GREEN FLAG WIRELESS LLC
MEA021	B	Licensee renewal application	0003001476	KNLB293	NW Spectrum Co.
		Competing application	0003103184		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065125		GREEN FLAG WIRELESS LLC

Knoxville

MEA022	A	Licensee renewal application	0003063580	KNLB229	BellSouth Mobile Data, Inc.
		Competing application	0003113290		GREEN FLAG WIRELESS, LLC

Louisville-Lexington-Evansville

MEA023	A	Licensee renewal application	0003005917	WPSL360	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003063593	KNLB230	BellSouth Mobile Data, Inc.
		Competing application	0003113538		GREEN FLAG WIRELESS, LLC
		Competing application	0003065126		GREEN FLAG WIRELESS LLC
MEA023	B	Licensee renewal application	0003063599	KNLB231	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003005911	WPSL354	Nextel Spectrum Acquisition Corp.
		Competing application	0003065127		GREEN FLAG WIRELESS LLC
		Competing application	0003113539		GREEN FLAG WIRELESS LLC

Birmingham

MEA024	A	Licensee renewal application	0003063585	KNLB246	BellSouth Mobile Data, Inc.
		Competing application	0003112496		CWC LICENSE HOLDING INC
MEA024	B	Licensee renewal application	0003005923	KNLB232	Nextel Spectrum Acquisition Corp.
		Competing application	0003060927		CWC LICENSE HOLDING INC

Nashville

MEA025	A	Licensee renewal application	0003063601	KNLB233	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003005918	WPSL361	Nextel Spectrum Acquisition Corp.
		Competing application	0003065128		GREEN FLAG WIRELESS LLC
		Competing application	0003113540		GREEN FLAG WIRELESS, LLC
MEA025	B	Licensee renewal application	0003005912	WPSL355	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003063581	KNLB234	BellSouth Mobile Data, Inc.
		Competing application	0003113541		GREEN FLAG WIRELESS LLC
		Competing application	0003065129		GREEN FLAG WIRELESS LLC

Memphis-Jackson

MEA026	B	Licensee renewal application	0003005924	KNLB235	Nextel Spectrum Acquisition Corp.
		Competing application	0003065130		GREEN FLAG WIRELESS LLC

New Orleans-Baton Rouge

MEA027	A	Licensee renewal application	0003063604	KNLB236	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003005919	WPSL362	Nextel Spectrum Acquisition Corp.
		Competing application	0003113542		GREEN FLAG WIRELESS, LLC
		Competing application	0003065131		GREEN FLAG WIRELESS, LLC
MEA027	B	Licensee renewal application	0003063582	KNLB237	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003005913	WPSL356	Nextel Spectrum Acquisition Corp.
		Competing application	0003065132		GREEN FLAG WIRELESS LLC
		Competing application	0003113543		GREEN FLAG WIRELESS, LLC

Little Rock

MEA028	A	Licensee renewal application	0003063594	KNLB247	BellSouth Mobile Data, Inc.
		Competing application	0003113548		GREEN FLAG WIRELESS, LLC

Kansas City

MEA029	A	Licensee renewal application	0003001456	KNLB306	WCS Wireless License Subsidiary, LLC
		Competing application	0003065133		GREEN FLAG WIRELESS LLC
		Competing application	0003102939		SNAPLINE COMMUNICATIONS, LLC
MEA029	B	Licensee renewal application	0003063586	KNLB248	BellSouth Mobile Data, Inc.
		Competing application	0003113544		GREEN FLAG WIRELESS, LLC

St. Louis

MEA030	A	Licensee renewal application	0003001459	KNLB207	WCS Wireless License Subsidiary, LLC
		Competing application	0003103186		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003066455		GREEN FLAG WIRELESS, LLC
MEA030	B	Licensee renewal application	0003001478	KNLB322	NW Spectrum Co.
		Competing application	0003066454		GREEN FLAG WIRELESS, LLC
		Competing application	0003103188		SNAPLINE COMMUNICATIONS, LLC

Houston

MEA031	A	Licensee renewal application	0003001479	KNLB323	NW Spectrum Co.
		Competing application	0003103187		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003066453		GREEN FLAG WIRELESS, LLC
MEA031	B	Licensee renewal application	0003063592	KNLB214	BellSouth Mobile Data, Inc.
		Competing application	0003113545		GREEN FLAG WIRELESS LLC
		Competing application	0003113543		GREEN FLAG WIRELESS, LLC

Dallas-Fort Worth

MEA032	A	Licensee renewal application	0003005921	WPYP769	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003005922	KNLB205	Nextel Spectrum Acquisition Corp.
		Competing application	0003066451		GREEN FLAG WIRELESS, LLC
		Competing application	0003066452		GREEN FLAG WIRELESS, LLC
MEA032	B	Licensee renewal application	0003005920	WPYP768	Nextel Spectrum Acquisition Corp.
		Licensee renewal application	0003005925	KNLB291	Nextel Spectrum Acquisition Corp.
		Competing application	0003066449		GREEN FLAG WIRELESS LLC
		Competing application	0003066450		GREEN FLAG WIRELESS, LLC

Denver

MEA033	A	Licensee renewal application	0003001457	KNLB307	WCS Wireless License Subsidiary, LLC
		Competing application	0003102940		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065058		GREEN FLAG WIRELESS LLC
MEA033	B	Licensee renewal application	0003062675	KNLB285	AWACS, Inc.
		Competing application	0003113546		GREEN FLAG WIRELESS, LLC

Omaha

MEA034	A	Licensee renewal application	0003062653	KNLB249	AWACS, Inc.
		Competing application	0003113547		GREEN FLAG WIRELESS, LLC
MEA034	B	Licensee renewal application	0003001477	KNLB294	NW Spectrum Co.
		Competing application	0003103185		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065057		GREEN FLAG WIRELESS LLC

Wichita

MEA035	A	Licensee renewal application	0003062654	KNLB250	AWACS, Inc.
		Competing application	0003113586		GREEN FLAG WIRELESS, LLC
MEA035	B	Licensee renewal application	0003062650	KNLB211	AWACS, Inc.
		Competing application	0003113746		GREEN FLAG WIRELESS, LLC

Tulsa

MEA036	A	Licensee renewal application	0003062655	KNLB251	AWACS, Inc.
		Competing application	0003113751		GREEN FLAG WIRELESS, LLC
MEA036	B	Licensee renewal application	0003062673	KNLB252	AWACS, Inc.
		Competing application	0003113763		GREEN FLAG WIRELESS, LLC

Oklahoma City

MEA037	A	Licensee renewal application	0003062656	KNLB253	AWACS, Inc.
		Competing application	0003113776		GREEN FLAG WIRELESS, LLC
MEA037	B	Licensee renewal application	0003062677	KNLB254	AWACS, Inc.
		Competing application	0003113787		GREEN FLAG WIRELESS, LLC

San Antonio

MEA038	A	Licensee renewal application	0003001474	KNLB255	NW Spectrum Co.
		Competing application	0003102655		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065056		GREEN FLAG WIRELESS LLC
MEA038	B	Licensee renewal application	0003001469	KNLB215	NW Spectrum Co.
		Competing application	0003102650		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065055		GREEN FLAG WIRELESS LLC

El Paso-Albuquerque

MEA039	A	Licensee renewal application	0003062657	KNLB256	AWACS, Inc.
		Competing application	0003113788		GREEN FLAG WIRELESS, LLC
MEA039	B	Licensee renewal application	0003062669	KNLB324	AWACS, Inc.
		Competing application	0003113794		GREEN FLAG WIRELESS, LLC

Phoenix

MEA040	A	Licensee renewal application	0003063587	KNLB257	BellSouth Mobile Data, Inc.
		Competing application	0003113797		GREEN FLAG WIRELESS, LLC
MEA040	B	Licensee renewal application	0003001472	KNLB219	NW Spectrum Co.
		Competing application	0003102653		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065054		GREEN FLAG WIRELESS LLC

Spokane-Billings

MEA041	A	Licensee renewal application	0003063605	KNLB258	BellSouth Mobile Data, Inc.
		Competing application	0003113804		GREEN FLAG WIRELESS, LLC
MEA041	B	Licensee renewal application	0003063588	KNLB259	BellSouth Mobile Data, Inc.
		Competing application	0003113807		GREEN FLAG WIRELESS, LLC

Salt Lake City

MEA042	A	Licensee renewal application	0003062658	KNLB260	AWACS, Inc.
		Competing application	0003113398		GREEN FLAG WIRELESS, LLC
MEA042	B	Licensee renewal application	0003062659	KNLB261	AWACS, Inc.
		Competing application	0003113399		GREEN FLAG WIRELESS, LLC

San Francisco-Oakland-San Jose

MEA043	A	Licensee renewal application	0003062660	KNLB262	AWACS, Inc.
		Competing application	0003113400		GREEN FLAG WIRELESS LLC
MEA043	B	Licensee renewal application	0003062668	KNLB286	AWACS, Inc.
		Competing application	0003113401		GREEN FLAG WIRELESS, LLC

Los Angeles-San Diego

MEA044	A	Licensee renewal application	0003001473	KNLB220	NW Spectrum Co.
		Competing application	0003102654		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065053		GREEN FLAG WIRELESS LLC
MEA044	B	Licensee renewal application	0003063609	KNLB287	BellSouth Mobile Data, Inc.
		Competing application	0003113402		GREEN FLAG WIRELESS, LLC

Portland

MEA045	A	Licensee renewal application	0003001461	KNLB295	WCS Wireless License Subsidiary, LLC
		Competing application	0003065052		GREEN FLAG WIRELESS LLC
		Competing application	0003103190		SNAPLINE COMMUNICATIONS, LLC
MEA045	B	Licensee renewal application	0003063589	KNLB263	BellSouth Mobile Data, Inc.
		Competing application	0003113403		GREEN FLAG WIRELESS, LLC

Seattle

MEA046	A	Licensee renewal application	0003001462	KNLB296	WCS Wireless License Subsidiary, LLC
		Competing application	0003103191		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065051		GREEN FLAG WIRELESS LLC
MEA046	B	Licensee renewal application	0003063595	KNLB288	BellSouth Mobile Data, Inc.
		Competing application	0003113404		GREEN FLAG WIRELESS, LLC

Alaska

MEA047	A	Licensee renewal application	0003062661	KNLB264	AWACS, Inc.
		Competing application	0003113405		GREEN FLAG WIRELESS, LLC
MEA047	B	Licensee renewal application	0003062674	KNLB265	AWACS, Inc.
		Competing application	0003113406		GREEN FLAG WIRELESS, LLC

Hawaii

MEA048	A	Licensee renewal application	0003063590	KNLB266	BellSouth Mobile Data, Inc.
		Competing application	0003113407		GREEN FLAG WIRELESS, LLC
MEA048	B	Licensee renewal application	0003001458	KNLB308	WCS Wireless License Subsidiary, LLC
		Competing application	0003102941		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065050		GREEN FLAG WIRELESS LLC

Guam and Northern Mariana

MEA049	B	Licensee renewal application	3020318	KNLB309	Guam Cellular & Paging
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Puerto Rico

MEA050	A	Licensee renewal application	0003062662	KNLB267	AWACS, Inc.
		Competing application	0003113408		GREEN FLAG WIRELESS, LLC
MEA050	B	Licensee renewal application	0003062671	KNLB268	AWACS, Inc.
		Competing application	0003113356		GREEN FLAG WIRELESS, LLC

American Samoa

MEA051	B	Licensee renewal application	0003062663	KNLB269	AWACS, Inc.
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Gulf of Mexico

MEA052	A	Licensee renewal application	0003099839	KNLB319	Stratos Offshore Services Company
		Competing application	0003119925		GREEN FLAG WIRELESS, LLC
MEA052	B	Licensee renewal application	0003099774	KNLB321	Stratos Offshore Services Company
		Competing application	0003119926		GREEN FLAG WIRELESS, LLC

Northeast

REA001	C	Licensee renewal application	0003063598	WPQL707	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003106777	WPQL631	Comcast WCS ME04, Inc.
		Licensee renewal application	0003063569	WPQL634	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003106667	WPQL636	Comcast WCS ME02, Inc.
		Competing application	0003113411		GREEN FLAG WIRELESS, LLC
		Competing application	0003113313		GREEN FLAG WIRELESS, LLC
		Competing application	0003119923		GREEN FLAG WIRELESS, LLC
		Competing application	0003119922		GREEN FLAG WIRELESS, LLC
REA001	D	Licensee renewal application	0003001463	KNLB297	WCS Wireless License Subsidiary, LLC
		Competing application	0003103192		SNAPLINE COMMUNICATIONS, LLC
		Competing application	0003065049		GREEN FLAG WIRELESS LLC

Southeast

REA002	C	Licensee renewal application	0003063583	KNLB238	BellSouth Mobile Data, Inc.
		Competing application	0003113431		GREEN FLAG WIRELESS, LLC
REA002	D	Licensee renewal application	0003063584	KNLB239	BellSouth Mobile Data, Inc.
		Competing application	0003113439		GREEN FLAG WIRELESS LLC

Great Lakes

REA003	C	Licensee renewal application	0003063602	WPQL635	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003062672	WPQL714	AWACS, Inc.
		Licensee renewal application	0003062649	WPQL712	AWACS, Inc.
		Licensee renewal application	0003063570	WPQL711	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003107382	WPQL633	Comcast WCS ME19, Inc.
		Licensee renewal application	0003063606	WPQL710	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003062647	WPQL708	AWACS, Inc.
		Licensee renewal application	0003062648	WPQL709	AWACS, Inc.
		Licensee renewal application	0003063571	WPQL713	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003107372	WPQL632	Comcast WCS ME16, Inc.
		Competing application	0003113338		GREEN FLAG WIRELESS, LLC
		Competing application	0003113461		GREEN FLAG WIRELESS LLC
		Competing application	0003113336		GREEN FLAG WIRELESS, LLC
		Competing application	0003113441		GREEN FLAG WIRELESS, LLC
		Competing application	0003113449		GREEN FLAG WIRELESS, LLC
		Competing application	0003113452		GREEN FLAG WIRELESS, LLC
		Competing application	0003113458		GREEN FLAG WIRELESS, LLC
		Competing application	0003113337		GREEN FLAG WIRELESS LLC
		Competing application	0003113463		GREEN FLAG WIRELESS LLC
REA003	D	Licensee renewal application	0003063572	WQDM396	BellSouth Mobile Data, Inc.
		Licensee renewal application	0003062670	KNLB325	AWACS, Inc.
		Competing application	0003113339		GREEN FLAG WIRELESS, LLC

Mississippi Valley

REA004	C	Licensee renewal application	0003063608	KNLB240	BellSouth Mobile Data, Inc.
		Competing application	0003113340		GREEN FLAG WIRELESS, LLC
REA004	D	Licensee renewal application	0003063597	KNLB241	BellSouth Mobile Data, Inc.
		Competing application	0003113341		GREEN FLAG WIRELESS, LLC

Central

REA005	C	Licensee renewal application	0003001448	KNLB298	WCS Wireless License Subsidiary, LLC
		Competing application	0003065048		GREEN FLAG WIRELESS LLC
		Competing application	0003102932		SNAPLINE COMMUNICATIONS, LLC
REA005	D	Licensee renewal application	0003001449	KNLB299	WCS Wireless License Subsidiary, LLC
		Competing application	0003103193		SNAPLINE COMMUNICATIONS LLC
		Competing application	0003065075		GREEN FLAG WIRELESS LLC

West

REA006	C	Licensee renewal application	0003001450	KNLB300	WCS Wireless License Subsidiary, LLC
		Competing application	0003065074		GREEN FLAG WIRELESS LLC
		Competing application	0003102933		SNAPLINE COMMUNICATIONS, LLC
REA006	D	Licensee renewal application	0003001451	KNLB301	WCS Wireless License Subsidiary, LLC
		Competing application	0003065073		GREEN FLAG WIRELESS LLC
		Competing application	0003102934		SNAPLINE COMMUNICATIONS, LLC

Alaska

REA007	C	Licensee renewal application	0003062678	KNLB270	AWACS, Inc.
		Competing application	0003113342		GREEN FLAG WIRELESS, LLC
REA007	D	Licensee renewal application	0003062664	KNLB271	AWACS, Inc.
		Competing application	0003113343		GREEN FLAG WIRELESS LLC

Hawaii

REA008	C	Licensee renewal application	0003063600	KNLB272	BellSouth Mobile Data, Inc.
		Competing application	0003113344		GREEN FLAG WIRELESS, LLC
REA008	D	Competing application	0003119924		GREEN FLAG WIRELESS, LLC

Guam/Northern Mariana Islands

REA009	C	Licensee renewal application	3033367	KNLB242	CELLUTEC
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Puerto Rico/U.S.Virgin Islands

REA010	C	Licensee renewal application	0003062665	KNLB273	AWACS, Inc.
		Competing application	0003113345		GREEN FLAG WIRELESS LLC
REA010	D	Licensee renewal application	0003062666	KNLB274	AWACS, Inc.
		Competing application	0003113346		GREEN FLAG WIRELESS LLC

American Samoa

REA011	D	Licensee renewal application	0003033369	KNLB216	CELLUTEC
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Gulf of Mexico

REA012	C	Licensee renewal application	0003099830	KNLB320	Stratos Offshore Services Company
		Competing application	0003119927		GREEN FLAG WIRELESS, LLC
REA012	D	Licensee renewal application	0003099720	KNLB212	Stratos Offshore Services Company
		Competing application	0003119928		GREEN FLAG WIRELESS, LLC